

No. 12042

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

---

UNITED STATES OF AMERICA,

Appellant,

vs.

ERNEST J. UARTE,

Appellee.

---

TRANSCRIPT OF RECORD

Appeal From the District Court of the United States  
for the Southern District of California,  
Northern Division

---

FILED

NOV 29 1948

PAUL P. O'BRIEN,  
CLERK



**No. 12042**

IN THE

**United States Court of Appeals**

FOR THE NINTH CIRCUIT

---

UNITED STATES OF AMERICA,

Appellant,

vs.

ERNEST J. UARTE,

Appellee.

---

**TRANSCRIPT OF RECORD**

Appeal From the District Court of the United States  
for the Southern District of California,  
Northern Division

---





# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Answer and Counter-Claim, Defendant's.....	6
Answer to Counter-Claim, Plaintiff's.....	15
Appeal:	
Notice of .....	25
Order Extending Time to Docket.....	26
Statement of Points on (Court of Appeals).....	318
Stipulation re Use of Original Exhibits on (Court of Appeals) .....	320
Certificate of Clerk.....	28
Complaint for Personal Injuries.....	2
Findings of Fact and Conclusions of Law.....	19
Judgment .....	23
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	25
Objections to Plaintiff's Findings of Fact and Con- clusions of Law and Order Overruling.....	17
Order Extending Time to Docket Appeal.....	26
Order for Transmission of Original Exhibits.....	27
Order Overruling Objections to Plaintiff's Findings of Fact and Conclusions of Law.....	19

	Page
Reporter's Transcript of Proceedings.....	29
Testimony on Behalf of Plaintiff:	
Badostain, Peter—	
Direct examination .....	168
Cross-examination .....	173
Redirect examination .....	174
Daniels, W. R.—	
Direct examination .....	106
Cross-examination .....	114
Deming, Lawrence—	
Direct examination .....	43
Cross-examination .....	72
Direct examination (recalled).....	178
Cross-examination .....	179
Redirect examination .....	182
Roberts, Allen Thomas—	
Direct examination .....	93
Cross-examination .....	102
Redirect examination .....	105
Layana, Ceferneo—	
Direct examination .....	175
Cross-examination .....	176
Direct examination (rebuttal).....	289
McCoy, Don A.—	
Direct examination .....	120
Cross-examination .....	145
Redirect examination .....	164

Reporter's Transcript of Proceedings:	Page
Testimony on Behalf of Plaintiff:	
Solberg, Dr. Lawrence A.—	
Direct examination .....	213
Voir dire examination.....	215
Direct examination (continued).....	216
Cross-examination .....	233
Redirect examination .....	241
Uarte, Ernest John—	
Direct examination .....	74
Direct examination (resumed).....	183
Cross-examination .....	185
Redirect examination .....	193
Testimony on Behalf of Defendant:	
Becker, Alex T.—	
Direct examination .....	245
Cross-examination .....	250
Redirect examination .....	251
Burgess, William Edward—	
Direct examination .....	252
Cross-examination .....	260
Redirect examination .....	261
Recross-examination .....	262
Redirect examination .....	264
Direct examination (recalled).....	278
Chandler, Walter—	
Direct examination .....	286
Cook, Maude—	
Direct examination .....	209
Direct examination (recalled).....	282

Reporter's Transcript of Proceedings:	Page
Testimony on Behalf of Defendant:	
Gill, Clark K.—	
Direct examination .....	200
Cross-examination .....	208
McCoy, Dorothy—	
Direct examination .....	196
Cross-examination .....	199
Northridge, Edward—	
Direct examination .....	270
Direct examination (recalled).....	280
Segren, Peter G.—	
Direct examination .....	265
Cross-examination .....	268
Redirect examination .....	268
Recross-examination .....	269
Recross-examination (resumed) .....	276
Statement of Points on Appeal (Court of Appeals)....	318
Stipulation re Use of Original Exhibits on Appeal (Court of Appeals).....	320

## INDEX TO EXHIBITS

## Plaintiff's Exhibits:

No.	Page
1. Blackboard drawing (For Identification).....	39
(Withdrawn) .....	291
2. Photograph of station wagon (For Identification) .....	43
(In Evidence) .....	67
3. Photograph of Uarte Ford sedan (For Identification) .....	43
(In Evidence) .....	68
4. Photograph showing rear end of trailer (For Identification) .....	43
(In Evidence) .....	49
5. Photograph of front end of Navy station wagon (For Identification) .....	43
(In Evidence) .....	66
6. Photograph of Navy station wagon (For Identification) .....	43
(In Evidence) .....	66
7. Photograph of truck and trailer (For Identification) .....	43
(In Evidence) .....	48
8. Photograph of truck and trailer (For Identification) .....	43
(In Evidence) .....	49
9. Photograph of front end of Ford sedan (For Identification) .....	43
(In Evidence) .....	71

## Plaintiff's Exhibits :

No.	Page
10. Photograph of trailer (For Identification).....	43
(In Evidence) .....	72
11. Photograph of highway (For Identification)....	43
(In Evidence) .....	69
12. Photograph showing general characteristics of roadway (For Identification).....	43
(In Evidence) .....	72
13. Diagram made by officers at scene of accident (In Evidence) .....	56
14. Drawing (For Identification).....	134
(In Evidence) .....	135

## Defendant's Exhibits:

A. to G. Groups of photographs (In Evidence).....	255
H. Statement given orally by Mr. Uarte (In Evidence) .....	284







NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

JAMES M. CARTER  
United States Attorney

CLYDE C. DOWNING

MAX F. DEUTZ  
Assistants U. S. Attorney

600 U. S. Post Office and Court House Building  
Los Angeles 12, Calif.

For Appellee:

STAMMER & McKNIGHT

W. H. STAMMER

GALEN McKNIGHT

531 Brix Building  
Fresno, Calif. [1\*]

In the District Court of the United States for the  
Southern District of California  
Northern Division  
Civil No. 648-ND

ERNEST J. UARTE,

Plaintiff,

vs.

UNITED STATES OF AMERICA; DEPARTMENT  
OF THE NAVY; TWELFTH NAVAL DIS-  
TRICT; GOLDEN STATE COMPANY, LTD.;  
DON ARTHUR McCOY; FIRST DOE; SEC-  
OND DOE; THIRD DOE; FOURTH DOE and  
FIFTH DOE,

Defendants.

COMPLAINT FOR PERSONAL INJURIES  
ARISING OUT OF TORT

Plaintiff complains of defendants and states his claim  
as follows:

I.

That the true names of the defendants sued herein un-  
der the fictitious names of First Doe, Second Doe, Third  
Doe, Fourth Doe, and Fifth Doe are unknown to plaintiff.

II.

That the defendants Department of the Navy and  
Twelfth Naval District are departments and divisions of  
the United States.

III.

That defendant Golden State Company, Ltd., is and  
was at all times herein mentioned a corporation duly or-

ganized and existing under the laws of the State of Delaware. [2]

#### IV.

That at all times herein mentioned, defendants United States of America, Department of the Navy, and Twelfth Naval District were the owners of a Ford Station Wagon; that Richard Francis Rogers and Roger Davis Green were employees of defendants United States of America, Department of the Navy, and Twelfth Naval District; and that Richard Francis Rogers and Roger Davis Green were driving, operating and using said Ford Station Wagon with the knowledge, permission and consent of said owners, and within the scope of said employment.

#### V.

That at all times herein mentioned, Golden State Company, Ltd., a corporation, was the owner of a tractor and semi-trailer; that defendant Don Arthur McCoy was an employee of defendant Golden State Company, Ltd.; and that defendant Don Arthur McCoy was driving, operating and using said tractor and semi-trailer with the knowledge, permission and consent of said owner, and within the scope of said employment.

#### VI.

That on or about July 24, 1946, on U. S. Highway No. 99, approximately two miles north of the City of Madera, County of Madera, State of California, said Richard Francis Rogers and said Roger Davis Green negligently drove, operated and used said Ford station wagon, and defendant Don Arthur McCoy negligently drove, operated

and used said tractor and semi-trailer, and thereby caused said Ford Station Wagon to collide with a Ford sedan automobile owned and driven by plaintiff, and caused said Ford sedan automobile to come into collision with said tractor and semi-trailer, injuring and damaging plaintiff and his said Ford sedan automobile as is hereinafter described.

#### VII.

That as a proximate result thereof, plaintiff received severe [3] personal injuries, including a fracture of the skull, a fracture of the right leg, multiple fractured ribs, a punctured and collapsed lung, and other injuries of the head and body; that said injuries caused plaintiff severe pain and suffering; that the full nature and extent of all of said injuries are unknown to plaintiff at this time, but plaintiff is informed and believes, and upon such information and belief alleges that said injuries are permanent and will cause plaintiff to be permanently injured and crippled and will cause plaintiff pain, suffering and disability for the rest of his life; all of which is to plaintiff's damage in the sum of \$50,000.00.

#### VIII.

As a proximate result thereof, plaintiff has incurred medical, hospital and nursing expenses in the sum of \$2,271.25, to plaintiff's damage in said sum of \$2,271.25; that plaintiff will incur additional medical, hospital and nursing expenses in the future, the amount of which is now unknown to plaintiff, and when plaintiff ascertains the amount of such expenses, he will ask leave of this

Court to amend this complaint and insert herein the amount thereof.

IX.

That at the time of said accident plaintiff was employed by Bank of America, National Trust & Savings Association, and as a proximate result of said accident plaintiff was unable to perform any services in the said employment from the date of said accident to February 15, 1947, to plaintiff's further damage in the sum of \$1,765.00.

X.

That as a proximate result thereof, plaintiff's Ford sedan automobile was broken and damaged in the sum of \$600.00, to plaintiff's further damage in said sum of \$600.00. [4]

Wherefore, plaintiff prays judgment against defendants, and each of them, in the sum of \$54,636.25 and for costs of suit herein.

STAMMER & McKNIGHT

W. H. STAMMER

GALEN McKNIGHT

By Galen McKnight

Attorneys for Plaintiff

[Endorsed]: Filed Jul. 17, 1947. Edmund L. Smith, Clerk. [5]

In the District Court of the United States in and for the  
Southern District of California  
Northern Division

No. 648—ND

ERNEST J. UARTE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

### ANSWER AND COUNTERCLAIM

Comes now the defendant, United States of America, and for its answer to plaintiff's complaint on file herein admits, denies and alleges as follows:

#### I.

Answering paragraphs I, II and III of said complaint, this answering defendant alleges that the Court has heretofore ordered that the action proceed solely against the United States of America; that by reason thereof all of the allegations contained in said paragraphs are immaterial to the issues of said case.

#### II.

Answering paragraph IV of said complaint, this answering defendant admits that at all times mentioned in said complaint it was the owner of a 1942 Ford Station Wagon, USN-23752; and further admits that at all of said times Richard Francis Rogers and Roger Davis Green were employees of this answering defendant, to wit, members of the United States Navy; further answering said paragraph, this answering defendant alleges that it is without knowledge or information sufficient to form a belief with respect to which of [6] said employees was driving, operating and using said Ford Station Wagon

at the times and places involved herein, and in that connection alleges that whichever of said employees of this defendant was driving, operating and using said Ford Station Wagon at the times and places involved herein was doing so with the knowledge, permission and consent of this defendant and while acting within the scope of his office or employment and in line of duty; that the hereinafter mentioned collision resulted in the deaths of the said Richard Francis Rogers and Roger Davis Green, the death of said Richard Francis Rogers occurring instantly and the death of said Roger Davis Green occurring at approximately 6:50 A. M. on July 25, 1946; further answering said paragraph, this answering defendant denies generally and specifically each and every allegation contained therein and not herein specifically admitted.

### III.

Answering paragraph V of said complaint, this answering defendant admits that at all times herein mentioned Golden State Company, Ltd., a corporation, was the owner of a tractor and semi-trailer; that Don Arthur McCoy was an employee of Golden State Company, Ltd.; and that said Don Arthur McCoy was driving, operating and using said tractor and semi-trailer with the knowledge, permission and consent of said owner, and within the scope of said employment.

### IV.

Answering paragraph VI of said complaint, this answering defendant admits that on or about July 24, 1946, at approximately 11:30 P. M., on U. S. Highway No. 99, approximately two miles north of the City of Madera, County of Madera, State of California, either the said Richard Francis Rogers or the said Roger Davis Green was driving and operating the aforementioned Ford Station Wagon in a southerly direction; and that at the



aforesaid time and place the aforementioned Don Arthur McCoy was driving and operating the aforementioned tractor and semi-trailer in a northerly direction; further answering said paragraph, this answering defendant admits that at the aforesaid time and place the plaintiff was driving and operating a certain Ford sedan automobile in a southerly direction; further answering said paragraph, this answering defendant denies generally and specifically each and every allegation contained [7] therein and not herein specifically admitted, and in that connection this answering defendant alleges that at all of the aforesaid times and places the plaintiff did so negligently, carelessly and recklessly drive and operate his aforesaid Ford sedan so as to cause it to, and it did, cross over into the east lane of traffic and collide with the right front of the aforementioned tractor and semi-trailer, causing said tractor and semi-trailer to cross into the west lane of traffic, which was occupied by the aforementioned Ford Station Wagon, and causing a collision to occur between said Ford Station Wagon and the said tractor and semi-trailer.

## V.

Answering paragraph VII of said complaint, this answering defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph with respect to the nature or extent of the injuries and damages sustained by the plaintiff and, therefore, denies the same and every part thereof; further answering said paragraph, this answering defendant generally and specifically denies that any of the therein mentioned injuries or damages whatsoever, either in the sum or of the nature or to the extent therein alleged, or in any other sum or sums, or at all, were sustained by the plaintiff, or that the plaintiff



was in any manner or respect whatsoever injured or damaged, or that plaintiff was caused to be permanently or otherwise injured or crippled, or was caused any pain, suffering or disability whatsoever, by reason or because or as a direct or proximate result of any negligent or wrongful act or omission of this answering defendant or of any employee of it; and denies that the plaintiff has been, was or is damaged in the sum of Fifty Thousand Dollars (\$50,000.00), or in any other sum or sums, or at all.

## VI.

Answering paragraph VIII of said complaint, this answering defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph; further answering said paragraph, this answering defendant generally and specifically denies that the plaintiff has incurred medical, hospital or nursing expenses, [8] either of the value in said paragraph alleged, or of any other value, or at all, or that the plaintiff has been damaged, either in the sum therein alleged, or in any other sum or sums, or at all, or that the plaintiff will incur additional medical, hospital or nursing expenses in the future in any amount whatsoever, or at all, by reason or because or as a direct or proximate result of any negligent or wrongful act or omission of this answering defendant or of any employee of it; and denies that the plaintiff has been, was or is damaged in the sum of Two Thousand Two Hundred Seventy-One and 25/100 Dollars (\$2,271.25), or in any other sum or sums, or at all.

## VII.

Answering paragraph IX of said complaint, this answering defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth

of the allegations contained in said paragraph with respect to the employment or earnings of the plaintiff and as to his inability to perform any services in his said employment, and, therefore, denies the same and every part thereof; further answering said paragraph, this answering defendant denies that the plaintiff was unable to perform any services in his employment therein referred to, either for the period therein named, or for any other period, or at all, or that the plaintiff was, is or has been damaged in the sum of One Thousand Seven Hundred Sixty-Five Dollars (\$1,765.00), or in any other sum or sums, or at all, by reason or because or as a direct or proximate result of any negligent or wrongful act or omission whatsoever of this answering defendant or of any employee of it.

#### VIII.

Answering paragraph X of said complaint, this answering defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained; further answering said paragraph, this answering defendant generally and specifically denies that the plaintiff's Ford sedan automobile was broken or damaged in the sum of Six Hundred Dollars (\$600.00), or in any other sum or sums, or at all, or that the plaintiff has been damaged in said sum of Six Hundred Dollars (\$600.00), or in any other sum or sums, or at all, by reason or because or as a direct or [9] proximate result of any negligent or wrongful act or omission whatsoever of this answering defendant or of any employee of it.

#### IX.

Further answering said complaint, this answering defendant denies that by reason or because or as a direct or proximate result of any negligent or wrongful act or

omission of it or of any of its employees, either as alleged in the complaint, or of any other kind or nature whatsoever, the accident mentioned in said complaint occurred, or that thereby, or at all, the plaintiff was injured or sustained any damage to or loss of property, or any personal injury, in any particular or manner or sum whatsoever.

### X.

Further answering said complaint, this answering defendant denies that at the time or place mentioned in the complaint, or at any other time or place, it or any of its employees, including the aforementioned Richard Francis Rogers and Roger Davis Green, committed any negligent or wrongful act or omission in any particular or manner whatsoever.

And for a Second, Separate and Further Answer and Affirmative Defense to the Plaintiff's Complaint on File Herein, This Answering Defendant Alleges:

### I.

That neither the accident referred to or mentioned in the plaintiff's complaint, nor any of the injuries or damages, if any, alleged to have been sustained by the plaintiff, by reason thereof, occurred or were caused or were sustained by the plaintiff by reason or because or as a direct or proximate result of any negligent or wrongful act or omission whatsoever on the part of this answering defendant or of any employee of it while acting within the scope of his office or employment.

And for a Third, Separate and Further Answer and Affirmative Defense to the Plaintiff's Complaint on File Herein, This Answering Defendant Alleges:

### I.

That the accident referred to and mentioned in plaintiff's complaint and all of the injuries and damages, if

any, alleged to have been sustained by the plaintiff, by reason thereof, were solely, directly, proximately and [10] exclusively caused and sustained by the fault, negligence, carelessness, recklessness and unlawful acts of the plaintiff in the premises, in that at all of the times and places mentioned in said complaint the plaintiff negligently and carelessly failed and neglected to exercise or use due, ordinary, reasonable, or any care, caution or prudence to avoid or prevent the aforesaid accident and the resulting injuries and damages, if any, by him sustained, or for his own safety or protection, and at the times and places mentioned in said complaint the plaintiff negligently and carelessly crossed the highway contrary to and in defiance of the laws of the State of California; and said plaintiff did at all of the times and places mentioned in the complaint operate the aforesaid Ford sedan in such a careless, reckless, negligent and unlawful manner as to cause it to, and it did, cross over into the east lane of traffic and collide with the right front of the aforementioned tractor and semi-trailer, causing said tractor and semi-trailer to cross into the west lane of traffic, which was occupied by the aforementioned Ford Station Wagon, and causing a collision to occur between said Ford Station Wagon and the said tractor and semi-trailer; that the plaintiff's aforesaid carelessness, recklessness, negligence and unlawful acts so caused said accident and his said injuries and damages, if any there were, that this answering defendant is in no manner liable or to blame therefor.

### COUNTERCLAIM

By way of counterclaim, the defendant, United States of America, alleges:

#### I.

That this answering defendant is informed and believes and therefore alleges the fact to be that at all times herein

mentioned the plaintiff was the owner and operator of a certain Ford sedan automobile.

## II.

That at all times herein mentioned the United States of America was the owner of a certain 1942 Ford Station Wagon, USN-23752; that at the time and place of the happening of the accident hereinafter alleged, the [11] said Ford Station Wagon was assigned to the United States Navy and was being driven and operated by either Richard Francis Rogers or Roger Davis Green, members of the United States Navy, while the driver thereof was acting within the scope of his office or employment and in line of duty.

## III.

That on or about July 24, 1946, at approximately 11:30 P. M., on U. S. Highway No. 99, approximately two miles north of the City of Madera, County of Madera, State of California, either the said Richard Francis Rogers or the said Roger Davis Green was driving and operating the aforementioned Ford Station Wagon in a southerly direction; that one Don Arthur McCoy was driving and operating a certain tractor and semi-trailer in a northerly direction; that at the aforesaid time and place the plaintiff was driving and operating the aforesaid Ford sedan automobile in a southerly direction; that at the aforesaid time and place the plaintiff did so negligently, carelessly and recklessly drive and operate his aforesaid Ford sedan so as to cause it to, and it did, cross over into the east lane of traffic and collide with the right front of the aforementioned tractor and semi-trailer, causing said tractor and semi-trailer to cross into the west lane of traffic, which was occupied by the aforementioned Ford Station Wagon, and causing a collision to occur between said Ford Station Wagon and the said tractor and semi-trailer.

## IV.

That the aforesaid carelessness, recklessness, negligence and unlawful acts of the plaintiff was the proximate cause of the aforementioned collision and resulting damage to the Ford Station Wagon of the United States of America.

## V.

That as a direct and proximate result thereof, the said Ford Station Wagon was broken, damaged and demolished in the approximate sum of Seven Hundred Dollars (\$700.00) to the defendant's damage in said sum of Seven Hundred Dollars (\$700.00). [12]

Wherefore, this answering defendant prays for judgment against the plaintiff as follows: That plaintiff take nothing against it by reason of his complaint and suit on file herein; that this answering defendant have judgment against the plaintiff for Seven Hundred Dollars (\$700.00); that this answering defendant have and be awarded its costs of suit incurred herein; and for such other and further relief as to this Court may seem meet, just and proper in the premises.

JAMES M. CARTER

United States Attorney

CLYDE C. DOWNING and

ROBERT KOMINS

Assistant U. S. Attorneys

By Robert Komins

Attorneys for Defendant [13]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 11, 1948. Edmund L. Smith, Clerk. [14]



[Title of District Court and Cause]

## ANSWER OF PLAINTIFF TO COUNTERCLAIM

As his first defense to the counterclaim of the defendant, United States of America, plaintiff admits, denies and alleges as follows:

### I.

Admits the allegations in paragraph I of said counterclaim.

### II.

Admits the allegations in paragraph II of said counterclaim.

### III.

Admits that on or about July 24, 1946, at approximately 11:30 P. M., on U. S. Highway No. 99, approximately two miles north of the City of Madera, County of Madera, State of California, either the said Richard Francis Rogers or the said Roger Davis Green was driving and operating the aforementioned Ford Station Wagon in a southerly direction; admits that one Don Arthur McCoy was driving and operating a certain tractor and semi-trailer in [15] a northerly direction; admits that at the aforesaid time and place the plaintiff was driving and operating the aforesaid Ford sedan automobile in a southerly direction; admits that said Ford sedan did cross over into the east lane of traffic and that a collision occurred between it and said tractor and semi-trailer and that said tractor and semi-trailer did collide with said Ford Station Wagon; denies that plaintiff was negligent or careless or reckless in any manner whatsoever, or at all, or that any negligence or carelessness or

recklessness or conduct on the part of plaintiff was a proximate cause of any collision or of any damages suffered therein; and denies each, every and all of the remaining allegations contained in paragraph III of said counterclaim.

#### IV.

Denies each, every and all of the allegations contained in paragraph IV of said counterclaim.

#### V.

Plaintiff alleges that he is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph V of said counterclaim, and therefore denies that defendant was damaged in the sum of Seven Hundred Dollars (\$700.00), or any sum whatsoever, or at all; and denies each, every and all of the remaining allegations contained in said paragraph V.

As a second defense to said counterclaim, plaintiff alleges:

#### I.

That at the time and place referred to in said counterclaim, said Richard Francis Rogers and said Roger Davis Green negligently drove, operated and used said Ford Station Wagon, and thereby caused the collision with said Ford sedan automobile and said [16] tractor and semi-trailer; and that said negligence on the part of Richard Francis Rogers and Roger Davis Green proximately contributed to and was the sole cause of said collision and of all injuries and damages suffered therein.



Wherefore, plaintiff prays that defendant take nothing by its counterclaim and that plaintiff have judgment as prayed for in his complaint.

STAMMER & McKNIGHT

W. H. STAMMER

GALEN McKNIGHT

By Galen McKnight

Attorneys for Plaintiff [17]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 31, 1948. Edmund L. Smith, Clerk. [18]

---

[Title of District Court and Cause]

DEFENDANT'S OBJECTION TO PLAINTIFF'S  
FINDINGS OF FACT AND CONCLUSIONS OF  
LAW

FINDINGS OF FACT

Defendant objects to Paragraph I of the plaintiff's findings of fact on the ground that they are contrary to the oral findings of the court as enunciated at the time of the argument of the above entitled case.

The court indicated that the position of the vehicles and the position of the bodies after the accident were such as to cause him to believe that the Government vehicle struck the truck owned by the Golden State Company first thereby causing the accident. The court did not indicate that it had a different or alternate theory as to what transpired at the time of the accident.

The theory of the accident as enunciated by the plaintiff in his complaint and as set forth in Paragraph I of his findings of fact, is not in accord with the evidence in that there was no testimony of any contact between the vehicles, and Don Arthur McCoy's testimony as to the bunch of headlights and the fact that one of the vehicles was "clipped or swerved or had a flat tire" was repudiated on cross-examination when he stated that that was merely a conclusion of a guess which he had made without any foundation therefor and [19] that he had seen no contact between the vehicles and had not seen one vehicle attempt to pass the other or at any time see the vehicles come abreast of each other.

It is respectfully suggested that the findings of fact, particularly Paragraph I thereof, be amended in accordance with the court's theory of this accident as stated in open court.

Dated: June 3, 1948.

JAMES M. CARTER  
United States Attorney

CLYDE C. DOWNING  
Assistant U. S. Attorney

MAX F. DEUTZ  
Assistant U. S. Attorney

Attorneys for Defendant

The following added by Court: [H]

The colloquy with counsel on argument at the conclusion of the trial and the court's observation at that time were not intended to be a resume of the evidence or the postulation of any "theory". The Court's remarks were intended to be no more than its conclusion that, from all

of the evidence in the whole case and considering the witnesses, their interests, their manner of testifying and under all the other rules for weighing evidence, the evidence preponderated to show that the driver of the station wagon was negligent, and that such negligence was the proximate cause of the accident, without any contributory negligence on the part of the plaintiff or the driver of the truck vehicle which was involved in the accident.

The objections to the proposed findings are overruled.

Los Angeles, California, June 4, 1948.

PEIRSON M. HALL

Judge, U. S. District Court

[Endorsed]: Filed Jun. 4, 1948. Edmund L. Smith, Clerk. [20]

---

[Title of District Court and Cause]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard on the 25th day of May, 1948, before the Court sitting without a jury; and the plaintiff having appeared personally and by and through his attorneys, Stammer & McKnight by Galen McKnight, Esq.; and the defendant, United States of America, having appeared by and through James M. Carter, United States Attorney, Clyde C. Downing, Robert Komins and Max F. Deutz, Assistant United States Attorneys, by Max F. Deutz, Esq.; and the stipulations of the parties and the evidence and proof of the parties having been heard and considered by the Court; and the cause having been submitted to the Court for its decision;

## FINDINGS OF FACT

The Court now finds the facts in this case to be as follows: [21]

## I.

That on July 24th, 1946, at approximately 11:30 o'clock P. M. on U. S. Highway No. 99, approximately 2.6 miles north of the City of Madera, in the County of Madera, State of California, defendant, United States of America, by and through its employees and agents, Richard Francis Rogers and Roger Davis Green, negligently drove, operated and used a Ford Station Wagon owned by defendant, United States of America, and thereby caused said Ford Station Wagon to collide with a Ford Sedan automobile owned and driven by plaintiff, Ernest J. Uarte, and caused said Ford Sedan automobile to come into collision with a truck owned by Golden State Company, Ltd., a corporation, and driven by Don Arthur McCoy, injuring plaintiff and damaging his said Ford Sedan automobile as hereinafter described.

## II.

That at said time and place, said Richard Francis Rogers and Roger Davis Green were Chief Petty Officers in the United States Navy, and, as such, were employees of the defendant, United States of America, and were acting within the scope and course of their office and employment; that both of said men were of equal rating in the United States Navy; that defendant had assigned both of said men to the mission they were performing at the time of said collision, and had given both of them the mutual care, custody and control of said Ford Station

Wagon and the permission to drive it; that both of said men had mutual rights to drive, operate and use said station wagon; and that at the time of said collision, one or the other of said men was driving and operating said station wagon, and both of said men were using said station wagon within the scope and course of their said office and employment.

### III.

That the plaintiff, Ernest J. Uarte, was not guilty of any [22] negligence or carelessness or recklessness or fault, or any unlawful act, or failure or neglect to exercise or use due or ordinary or reasonable care or caution or prudence, which proximately contributed to said collision or to the injuries and damages suffered by him therein.

### IV.

That plaintiff, Ernest J. Uarte, was the owner of said Ford Sedan automobile, and that as a proximate result of said collision, said Ford Sedan automobile was damaged in the sum of \$593.80, to plaintiff's damage in said sum.

### V.

That as a proximate result thereof, plaintiff, Ernest J. Uarte, received severe personal injuries to his further damage in the sum of \$16,536.25.

### VI.

That this action was filed and prosecuted to judgment by Stammer & McKnight, attorneys at law, for and on behalf of said plaintiff, Ernest J. Uarte, and that twenty per centum of the amount to be recovered thereunder is a reasonable attorneys' fee to be allowed to said attorneys.

## CONCLUSIONS OF LAW

Wherefore, as conclusions of law from the foregoing facts, the Court finds:

## I.

That plaintiff, Ernest J. Uarte, is entitled to a judgment against the defendant, United States of America, in the sum of \$17,130.05, and for his costs of suit herein. [23]

## II.

That the defendant, United States of America, is not entitled to recover upon its counterclaim or to any judgment against the plaintiff, Ernest J. Uarte.

## III.

That Stammer & McKnight, attorneys for plaintiff, are entitled to reasonable attorneys' fees in the sum of \$3,426.00, to be paid by the defendant, United States of America, to them out of, but not in addition to, the amount of said judgment in favor of the plaintiff, Ernest J. Uarte.

Let judgment be entered accordingly.

Dated: June 4th, 1948.

PEIRSON M. HALL

Approved as to form. James M. Carter, United States Attorney; Clyde C. Downing, Robert Komins, Max F. Deutz, Assistant U. S. Attorneys; by ....., Attorneys for Defendant [24]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 4, 1948. Edmund L. Smith, Clerk. [25]

In the District Court of the United States in and for the  
Southern District of California  
Northern Division  
Civil No. 648-N. D.

ERNEST J. UARTE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### JUDGMENT IN FAVOR OF PLAINTIFF

This cause came on to be heard on the 25th day of May, 1948, before the Court sitting without a jury; and the plaintiff having appeared personally and by and through his attorneys, Stammer & McKnight by Galen McKnight, Esq.; and the defendant, United States of America, having appeared by and through James M. Carter, United States Attorney, Clyde C. Downing, Robert Komins and Max F. Deutz, Assistant United States Attorneys, by Max F. Deutz, Esq.; and the stipulations of the parties and the evidence and proof of the parties having been heard and considered by the Court; and the cause having been submitted to the Court for its decision; and the Court having found the facts specially, and stated separately its conclusions of law thereon; and its said written findings of fact and conclusions of law having been signed by the Court and filed in said action: [26]



It Is Ordered, Adjudged and Decreed that plaintiff, Ernest J. Uarte, have judgment against the defendant, United States of America, in the sum of \$17,130.05, and for his costs of suit herein in the sum of \$134.92.

It Is Further Ordered, Adjudged and Decreed that the defendant, United States of America, take nothing by its counterclaim.

It Is Further Ordered, Adjudged and Decreed that Stammer & McKnight, attorneys for plaintiff, are hereby allowed reasonable attorneys' fees in the sum of \$3,426.00, to be paid by the defendant, United States of America, to said attorneys out of, but not in addition to, the amount of said judgment in favor of the plaintiff, Ernest J. Uarte.

Dated: June 4th, 1948.

PEIRSON M. HALL

Approved as to form. James M. Carter, United States Attorney; Clyde C. Downing, Robert Komins, Max F. Deutz, Assistant U. S. Attorneys; by ....., Attorneys for Defendant.

Judgment entered Jun. 4, 1948. Docketed Jun 4, 1948. J. Book 4, page 361. Edmund L. Smith, Clerk; by J. M. Horn, Deputy.

[Endorsed]: Filed Jun. 4, 1948. Edmund L. Smith, Clerk. [27]



[Title of District Court and Cause]

NOTICE OF APPEAL TO CIRCUIT COURT OF  
APPEALS

Notice is hereby given that the United States of America, the defendant above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on June 4, 1948.

Dated: August 2, 1948 at Los Angeles, California.

JAMES M. CARTER

United States Attorney

CLYDE C. DOWNING

Assistant U. S. Attorney

MAX F. DEUTZ

Assistant U. S. Attorney

Attorneys for Defendant and Appellant United States  
of America [28]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Aug. 2, 1948. Edmund L. Smith,  
Clerk. [29]

[Title of District Court and Cause]

ORDER EXTENDING TIME TO FILE RECORD  
AND DOCKET APPEAL

Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit having been filed herein on August 2, 1948, and

Good cause appearing therefor,

It Is Hereby Ordered that the time for filing the record on appeal with, and docketing the appeal of the within matter in, the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including September 25, 1948.

Dated: August 30, 1948.

BEN HARRISON

United States District Judge

Presented by: Max F. Deutz, Assistant U. S. Attorney.

[Endorsed]: Filed Aug. 30, 1948. Edmund L. Smith, Clerk. [30]

[Title of District Court and Cause]

ORDER FOR CERTIFICATION OF ORIGINAL  
EXHIBITS TO THE NINTH CIRCUIT COURT  
OF APPEALS PURSUANT TO 75(i) F. R. C. P.

Good Cause Appearing Therefor,

It Is Hereby Ordered that the original exhibits admitted in evidence in the above entitled action, at the trial thereof on May 25, 1948, to wit, Plaintiff's Exhibits No. 2 to 14, inclusive, and Defendant's Exhibits A to H, inclusive, may be certified with the record on appeal to the Ninth Circuit Court of Appeals in lieu of copies thereof.

Dated: September 2, 1948.

BEN HARRISON

United States District Judge

Presented by: Max F. Deutz, Assistant U. S. Attorney. [40]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Sep. 2, 1948. Edmund L. Smith, Clerk. [40]

[Title of District Court and Cause]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 41, inclusive, contain full, true and correct copies of Complaint for Personal Injuries Arising Out of Tort; Answer and Counter-Claim; Answer to Counter-Claim; Defendant's Objection to Plaintiff's Findings of Fact and Conclusions of Law and Order Overruling; Findings of Fact and Conclusions of Law; Judgment in Favor of Plaintiff; Notice of Appeal; Order Extending Time to File Record and Docket Appeal; Statement of Points on Which Appellant Intends to Rely on Appeal; Designation of Record on Appeal; Supplemental Designation of Record on Appeal; Plaintiff's Designation of Record and Order for Transmission of Original Exhibits which, together with copy of Reporter's Transcript of Proceedings on May 25, 1948 and original Plaintiff's Exhibits 2 to 14, inclusive, and original Defendant's Exhibits A to H, inclusive, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 22 day of September, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Title of District Court and Cause]

Honorable Peirson M. Hall, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Fresno, California, Tuesday, May 25, 1948

Appearances:

For the Plaintiff: Messrs. Stammer & McKnight, by Galen McKnight, Esq., 531 Brix Building, Fresno, California.

For the Defendant: James M. Carter, Esq., United States Attorney, by Max F. Deutz, Esq., Assistant U. S. Attorney, 600 Federal Building, Los Angeles, California. Fresno, California, Tuesday, May 25, 1948. 10:00 A. M.

The Clerk: No. 638, Ernest J. Uarte vs. United States of America.

The Court: You are Mr. McKnight?

Mr. McKnight: Yes, your Honor.

The Court: There is a jury waiver signed and in the file, is there?

Mr. McKnight: No, your Honor. There is no right to a jury in this type of a case, under the Tort Claims Act.

The Court: All right. I was forgetting that. Are you ready to proceed?

Mr. McKnight: Your Honor, I would like to—I think we may shorten it some possibly by making a short statement of our case.

The Court: All right.

Mr. McKnight: If the Court please, this involves an accident which happened at about 11:30 p.m. on July 24,

1946, in Madera County, about 2.6 miles north of the City of Madera.

For convenience and in order to shorten the time, the United States Attorney and I have entered into a stipulation. If I may read that, it will give your Honor a picture of the accident.

The Court: Well, I have it here before me.

Mr. McKnight: Yes, your Honor. [2\*]

The Court: The one that was handed to the Clerk, and it will be filed.

Mr. McKnight: Yes, your Honor.

“That the accident referred to in plaintiff’s complaint occurred on or about July 24, 1946, at approximately 11:30 o’clock p.m. on U. S. Highway 99 approximately 2.6 miles north of the City of Madera, in the County of Madera, State of California.

“(2) That at said place, U. S. Highway 99 consists of pavement approximately 22 feet wide, and is divided into two lanes of traffic separated by a single white line, and has shoulders on both sides.

“(3) That prior to the collision, plaintiff was driving a Ford Sedan automobile, owned by him, in a southerly direction on said highway, and either Richard Francis Rogers or Roger Davis Green was driving a Ford Station Wagon, owned by defendant, in a southerly direction on said highway, and Don Arthur McCoy was driving a tractor, semi-trailer and trailer, owned by Golden State Company, Ltd., in a northerly direction on said highway; and that at said time and place a collision occurred, involving all of said vehicles.

“(4) That at said time and place, Richard Francis Rogers and Roger Davis Green were Chief Petty Officers in the United States Navy, and, as such, were employees [3] of the defendant and were acting within the scope and course of their duties and employment; that both of said men were of equal rating in the United States Navy; that defendant had assigned both of said men to the mission they were performing at the time of said collision and had given to both of them the mutual care, custody and control of said Ford Station Wagon and the permission to drive it, and that both of them had mutual rights to drive, operate and use said vehicle.

“(5) That in said collision and as a proximate result thereof, said Ford Sedan automobile was damaged in the sum of \$593.80, and said Ford Station Wagon was damaged in the sum of \$700.00, and said Richard Francis Rogers and Roger Davis Green were killed and plaintiff was injured.

“Dated: May 25, 1948.” [4]

Mr. McKnight: The accident happened at the place referred to. It was at night. It was raining and the pavements were wet.

The Court: Raining in July?

Mr. McKnight: Yes, your Honor, it was raining and the pavement was wet. It was the first rain of the year, the only rain of the summer, and the pavements were very slippery.

The plaintiff was driving his vehicle southerly on Highway 99.

The Court: That is, in a Ford sedan automobile?

Mr. McKnight: That is in a Ford sedan automobile.

The Court: Yes. And Rogers and Green were driving a Ford station wagon owned by the defendant (that is admitted by the answer), in the same direction?

Mr. McKnight: Yes, your Honor. And the evidence will show that the station wagon was proceeding, prior to the accident, behind the plaintiff's automobile, following the plaintiff's automobile.

The Court: Wait a minute, now. That the soldiers—  
Mr. McKnight. Sailors.

The Court: —were following the plaintiff's automobile?

Mr. McKnight: They were following it in the sense that they were going in the same direction and they were behind. They were not following immediately behind up until immedi- [5] ately before the accident.

The Court: The Ford sedan of plaintiff ahead of station wagon, both going southerly?

Mr. McKnight. Yes. The highway at that point is a two-way paved highway, with shoulders on each side of it, partly paved and partly dirt.

The Court: The tractor, semi-trailer and trailer, I don't know what you mean by that.

Mr. McKnight: Well, a truck—a tractor and semi-trailer is a combination tractor-trailer, but they are joined together as one vehicle, referred to as a tractor and semi-trailer.

The Court: Well, that is the kind of a truck that they take the big body off the front end and then load it up, wheel it around and fasten it with the trailer?

Mr. McKnight: That is right, and then there was a trailer on behind that combination.

The Court: Well, it was that truck and a trailer?

Mr. McKnight: Yes.

The Court: And they were going northerly?



Mr. McKnight: Yes.

The Court: And the fact that Rogers and Green were employees of the United States and in the Navy is also admitted by the answer, in the course of their employment, and that both men were of equal rating. [6]

Mr. McKnight: They were both chief petty officers.

The Court: What does that mean?

Mr. McKnight: Well, they were both not superior to the other nor under the orders of the other.

The Court: Nor under the control or direction of the other?

Mr. McKnight: No. The purpose of that paragraph is to clarify it in so far as we have been able to determine, and I think as far as anyone has been able to determine, we can't say which of the two were actually driving the station wagon.

The Court: So that the result of this stipulation is that if either of the two were driving, the government is equally responsible, in the event they are responsible at all?

Mr. Deutz: I think that is right, your Honor. They are both government employees.

Mr. McKnight: I think that is true.

The Court: Then, the damages to the automobiles is stipulated.

File this stipulation, Mr. Clerk.

The Clerk: Yes, your Honor.

Mr. McKnight: The damage is stipulated to.

Your Honor, it is the position of the plaintiff and it is our hope that we may be able to prove, to the satisfaction of your Honor, that the plaintiff was driving his automobile [7] on his right side of the road, at a reasonable rate of speed, and that he was guilty of no negligence or no conduct that was the cause of this accident.

In that connection, we shall ask the Court to consider and approve the presumption of due care in so far as it applies to the plaintiff in this case.

The Court: Must I not indulge in that same presumption as to the men who were killed?

Mr. McKnight: I don't believe so, where the defendant is the employer and not the deceased himself. That is the rule in California, and I have found nothing contrary in the Federal Courts.

However, I don't think it will make a great deal of difference, because we will present proof as to the conduct of the driver of the Navy station wagon, and if that proof is insufficient, I assume that we will not have proved our case anyway.

Now, I mention that for this reason: It will appear in this case that there were two men in the Navy station wagon, both of them were killed, and they can't testify as witnesses. There were three men in the plaintiff's automobile, the plaintiff himself and two passengers. The proof will show that both of the passengers in the plaintiff's automobile were sleeping at the time the accident happened or immediately before it happened, and at least while part of it was [8] occurring, and their testimony is of minor value to the case, because they were asleep when the things occurred which led up to the accident.

The Court: The plaintiff was driving?

Mr. McKnight: The plaintiff was driving.

The plaintiff received a very severe head injury and he had a complete amnesia for a period of months preceding and after the accident, and including the space of the accident. That will be proved not only by his own testimony, but by the testimony of the doctor who had him under care after the accident; that he had no memory

at all and has no memory at all of how the accident happened or any of the facts leading up to the accident.

The driver of the truck that was going north was not killed. He does remember those things which he saw and the things which he heard, and can give us some enlightenment on the subject, but, he is the only witness, to our knowledge, who can do that, and, as any witness in any case, of course, he didn't see everything and his memory on some things is imperfect. His wife was with him and might be of some assistance, although I don't think she saw even as much as he did.

There was another automobile load of people, a colored man and his wife and several children, who were parking along the side of the road at the exact place where the accident [9] happened; in fact, the plaintiff's automobile, when it ended up, just barely struck this other car, but, all of the occupants of that car were sound asleep and none of them can testify as to how the accident happened.

So, we have a little bit of an unusual situation here, in that we have eight or ten people who might have been witnesses, and none of them can be considered as actual eye-witnesses to the accident but the one, the driver of the truck.

The Court: A lawyer's usual prayer for witnesses was answered in this case, but rather negatively, wasn't it?

Mr. McKnight: That is right, your Honor. I point that out to the Court for this reason: Now, for that reason, we are going to have to rely upon the physical facts, what was found there after the accident, upon the testimony of Mr. McCoy, the driver of the truck, and by other witnesses who can tell as to the conduct of the Navy station wagon, of its speed, and so forth, at points prior to the accident, but not at the immediate scene of the accident.

We will show the damage to the vehicles; we will have photographs with testimony, and there is sufficient evidence—and I say this not for effect upon the Court, because we are not trying it before a jury and your Honor has heard exaggerated statements many times, and I don't mean this as exaggerated, under all of the evidence that we have here, [10] I say sincerely to your Honor that I have an abiding conviction that this accident was caused solely and entirely and alone by negligent speed in driving on the part of the driver of the station wagon. I have to prove that by physical evidence from which inferences may or may not be drawn, within the judgment of your Honor, and upon the testimony of an unwilling and hostile witness, and I say that advisedly, because I don't want to mislead the Court.

Mr. McCoy, the driver of the truck, is not personally hostile. He is a gentleman in every way. He is an adverse party in another suit that is pending in the State Court. His employer is an adverse party in another suit. He is represented in the other case by his own counsel.

Mr. Deutz: You have to correct that, counsel. I don't believe they are adverse parties. I believe they are co-defendants.

Mr. McKnight: He is, according to the Supreme Court of California, an adverse party, but in this case, I treat him as an adverse party because somebody caused it and each would like to have somebody else blamed, and the Supreme Court of the State of California has said that he is an adverse party.

The Court: He is adverse to everybody.

Mr. McKnight: He is adverse to everybody except to himself and his employer. He has been subpoenaed. He has come in at the request of the government, who actually wanted [11] him also, but he is in a position, I

think, of what Rule 43b intended as an unwilling and hostile witness, and it will be necessary to prove my case with that type of a witness, which makes it rather difficult, and I start this case knowing that.

I call your Honor's attention to that so that you will not feel that we are circuitous when we go into all these surrounding details, because that is what we have to do, and I believe, when it is all in, your Honor will feel as I do—if I am wrong, I lose the case—but, that is the test that I have before me. It is the test I knew I had before me when I filed this action, and I would not be here unless I believed it. I may be entirely wrong, and your Honor may so consider it, but that will express the manner in which the case will be presented.

The Court: Thank you very much, Mr. McKnight.

Mr. Deutz: I think the Court should be aware of one or two things in evaluating the testimony.

Mr. McKnight has spoken of his abiding conviction in the plaintiff's case, in this instance, and I would like to point out to the Court that there was formerly a co-defendant in this action, the Golden State Company, Ltd.

The Golden State Company, Ltd. was dismissed from this action and that leaves the United States as the only party, and I might say that it is the position of the government that the United States is the plaintiff's last straw and they [12] are going to try to make a haystack of this straw, so there is just that question that I think should be evaluated.

The Court: Of course, I don't think that has any effect as to the weighing of the evidence, Mr. Deutz, because it would be a poor lawyer, indeed, who had a client who had suffered severe injuries, that did not join everybody that might possibly be liable, in any cause of

action, and the Golden State Company is not out of the case because the plaintiff wanted him out.

Mr. Deutz: The Golden State Company was dismissed on jurisdictional grounds, which is a contention that has been offered by the government in cases of this type all over the country. It is all because that merely the United States will defend an action for itself, alone, and not be coupled with another co-defendant defending it in the same action.

The Court: Well, that is the law of the case; Judge Yankwich has decided that and I will feel that I am bound by his decision in connection with the matter, regardless of what my personal feelings might be.

There appears to be no authority for the decision by any of the higher courts, particularly by this Circuit, in connection with the matter, and there may be some doubt that they will agree with the ruling that the Judge made in this case, and there are numerous decisions where inseparable controversies have been permitted to be tried. [13]

Mr. Deutz: One other observation: As far as Mr. McCoy is concerned, the government requested the Golden State Company to have Mr. and Mrs. McCoy appear in court. The appearing of those persons here to testify was on a mutual understanding that we would bring the witnesses from Oakland, and that they would bring the witness from the Imperial Valley. And they are not necessarily adverse witnesses in that sense.

The Court: Well, all the witnesses that are here, now, whether they were subject to the jurisdiction of the Court before, they are at this moment, and they are ordered to remain in attendance upon the Court until excused by the Court.



All right. Call your witnesses.

Mr. McKnight: Your Honor, Mr. Deutz and I have more or less together prepared a very rough diagram of the scene of the accident. It does not purport to be to scale or to be exactly in proportion.

The Court: That is what is referred to as a schematic diagram, is that it?

Mr. McKnight: I think that description would suit it very well, your Honor, and with the understanding that it is not to scale and that it is not completely in proportion, but that it is only illustrative of the situation there, may it be introduced as Plaintiff's Exhibit 1?

The Court: It will be marked as Plaintiff's Exhibit 1. [14] and I take it you will have a photograph made of it?

Mr. McKnight: Yes, sir, for your Honor's benefit. I assume it is very clear.

The Clerk: Shall I mark it?

The Court: The Clerk will mark it Plaintiff's Exhibit 1, the drawing on the blackboard.

(The blackboard drawing referred to was marked Plaintiff's Exhibit No. 1.)

Mr. McKnight: These white lines represent the main paved edge of the highway, and then there are some small paved shoulders on each side.

The Court: How wide are they?

Mr. McKnight: I understand they are five or six feet on each side.

The Court: On each side.

Mr. Deutz: I understand from Sergeant Gill that the highway that is paved is approximately 22 feet wide and there are 7 feet of paved shoulders on each side and dirt shoulders further than that.

The Court: Yes. The sketch was silent as to the shoulders. That is 7 feet on each side, that is of paved shoulders?

Mr. Deutz: That is right.

The Court: So-called pavement. 7 and 22 feet, that is 29 feet, plus 5 feet of dirt shoulder? [15]

Mr. McKnight: No. Your Honor, the dirt shoulder is indefinite. It just goes off until it gets into the field.

Mr. Deutz: That would be 22 feet plus 14 feet.

Mr. McKnight: 7 feet on each side.

Mr. Deutz: So the total width would be approximately 36 feet feet, that is, the pavement.

The Court: All right.

Mr. McKnight: The edge of the paved shoulders are represented by the irregular lines.

The Court: The irregular line?

Mr. McKnight: On each side.

The Court: The dotted line down between the pavement, I suppose, is the painted strips?

Mr. McKnight: Painted white line.

The Court: Painted white line?

Mr. McKnight: Yes, and these lines over here (indicating on blackboard sketch) represent the Southern Pacific Railroad tracks.

The Court: How far is it from the pavement to the Southern Pacific track?

Mr. McKnight: I can't answer that, your Honor.

The Court: 50 or 60 feet? You don't know, you can't say?

Mr. McKnight: I can't say.

The Court: All right. [16]

Mr. McKnight: And this square represents a block railroad signal which is only important in the case as



that certain objects were placed with reference to that after the accident happened.

The Court: I see. There is just another question: Maybe you can agree on it. Is the road area on either side of the paved and shoulder portions level, or is the shoulder—the road itself built up so that there is a slight depression on each side of the pavement there?

Mr. McKnight: Well, I couldn't answer that accurately. The officer will be here and we will also have a photograph of it, your Honor, and I think that will probably explain it.

Mr. Deutz: I believe that it will develop it is level, but we do have a photograph.

Mr. McKnight: I can't stipulate to anything on that.

The Court: By the way, you have a large number of photographs here?

Mr. McKnight: Yes, your Honor.

The Court: Well, just hand them to the Clerk and have them marked for identification, will you?

Mr. McKnight: Yes, sir.

The Court: In the order in which you will want them.

Mr. McKnight: Well, I haven't them segregated in order, your Honor.

The Court: You don't? [17]

Mr. McKnight: I do not. Some of them I may not even want to use, as unimportant.

The Court: Well, have them all marked exhibits sooner or later, for identification, and then they will be here and you can keep the record straight.

Mr. Deutz: May we enter into that further stipulation on the authenticity of the record from the proceedings at Madera?

Mr. McKnight: There was a trial at Madera in a case brought by the heirs at law of the deceased sailor boys and the defendants were the Golden State, Mr. McCoy and Mr. Uarte.

The Court: The plaintiff here?

Mr. McKnight: The plaintiff here. That case resulted in a non-suit in favor of the Golden State and Mr. McCoy and a hung jury as to Mr. Uarte's case. We have a transcript of that, which may be used by either counsel at the trial as a record for purposes, I take it, of refreshing memories or impeachment, and we are willing to stipulate that the record that we have here is an authentic transcript of that trial.

Mr. Deutz: And may be used for such purposes as are admissible in this Court.

Mr. McKnight: Yes.

The Court: All right. [18]

Mr. McKnight: Also, immediately after the accident, the Deputy District Attorney of Madera County went to the scene of the accident and interviewed some of the witnesses, before a shorthand reporter from his office. We have transcripts of those statements, and I think it can be further stipulated, for purposes of convenience, that those are true and correct transcriptions of the statements made by those witnesses at that time, under those circumstances, and a few minutes after the accident happened, and that they may be used in this Court by either party for such purposes as are admissible under the law.

The Court: It is so stipulated?

Mr. Deutz: It is so stipulated.

The Court: Very well.

Mr. Deutz: As long as counsel made the statement as to the outcome of those cases at Madera, I believe your

Honor should be better informed, that the matter is up on appeal before the District Court of Appeal and a decision is expected shortly.

Mr. McKnight: I assume that a judgment or determination of that case has no importance here.

Mr. Deutz: It has no bearing on this case.

The Court: No, it hasn't, the fact that everybody is expecting a decision shortly in their favor.

The Clerk: Your Honor, these photographs have been [19] marked as Plaintiff's Exhibits 2 to 12, inclusive, for identification.

(The photographs referred to were marked Plaintiff's Exhibits Nos. 2 to 12, inclusive, for identification.)

Mr. McKnight: Mr. Deming.

#### LAWRENCE DEMING,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Lawrence Deming.

The Clerk: And your address?

The Witness: 914 West 6th Street, Madera, California.

#### Direct Examination

By Mr. McKnight:

Q. Mr. Deming, you are an officer of the California Highway Patrol, are you not?

A. Yes, sir, I am.

Q. Located where? A. In Madera County.

Q. And were you so engaged on July 24, 1946?

A. I was. [20]

(Testimony of Lawrence Deming)

Q. How long had you been with the California Highway Patrol at that time?

A. I started with them September, 1944.

Q. And as an officer of the Highway Patrol, did you have occasion to go to the scene of the accident and investigate it, on July 24, 1946?

A. I did.

Q. Will you state what time you received the call to go to that accident?

A. We received the call from the radio station at approximately 11:35 p.m.

Q. And at what time did you arrive at the scene of the accident?

A. Approximately 11:50 p.m.

Q. Were you alone or did someone go with you?

A. Officer Pimley was with me.

Q. Is Officer Pimley now with the Highway Patrol?

A. No, sir.

Q. Was any other officer of the Highway Patrol there when you arrived? A. No, sir.

Q. Did any officer of the Highway Patrol arrive about the same time that you did or soon thereafter?

A. We called for Sergeant Gill.

Q. And did he then go to the scene of the accident? [21] A. Yes, he did.

Q. While you were at the scene of the accident, did you observe the pavement, observe the vehicles that were there, and make certain measurements? A. I did.

Q. Will you state to the Court what vehicles you found there that appeared to have been involved in this accident?

A. May I refer to the notes that I took at the time, Judge?

(Testimony of Lawrence Deming)

The Court: You may do so.

By the way, you stipulated about this truck and trailer. There are all kinds and phases of them.

Mr. McKnight: We will have photographs of it, your Honor.

The Court: Well, have you got one here now? If you are going to talk about these things on the Ford and the sedan and the truck, I would like to keep those in my mind.

Mr. McKnight: Counsel, do you have any objection if—

Mr. Deutz: I have no objection. I believe I have examined all those photographs, and I would like to stipulate that that truck and trailer is 57 feet long.

The Court: 57 feet. Well, that gives us an idea of what kind of a truck and trailer it was.

Mr. McKnight: As a matter of record, I would like to have the evidence, because I have no personal knowledge of [22] it.

The Court: I understand.

Mr. McKnight: There is one here you haven't seen, counsel. Plaintiff's Exhibit No. 2 for identification is a photograph of the station wagon.

The Court: After the accident?

Mr. McKnight: After the accident. We have none before the accident.

The Court: Yes.

Mr. McKnight: Plaintiff's Exhibit No. 7 for identification is a photograph of the truck and trailer.

The Court: Of the truck and trailer.

Mr. McKnight: Plaintiff's Exhibit No. 3 is a photograph of the Uarte Ford sedan as it appeared after the accident.

(Testimony of Lawrence Deming)

The Court: And the car on the other side here is the car where the colored people were?

Mr. McKnight: That is right.

The Court: All right.

Mr. McKnight: And Plaintiff's Exhibit No. 11 for identification is a photograph taken the next day of the highway, just to give your Honor an idea of the locale.

The Court: The block signal is shown over here (indicating).

Mr. McKnight: I had not noticed that, but it may be. [23] No. The block signal would be on the other side of the road.

Mr. Deutz: What is the last number?

Mr. McKnight: 11.

The Court: Very well. I can keep those in mind, now, when hearing the testimony.

Mr. McKnight: I will withdraw the last question, to save looking it up.

Q. What vehicles did you find there at the scene of the accident that appeared to have been involved in this accident?

A. Well, there was one Peterbilt tractor, semi-trailer and a trailer, and a Ford station wagon, another Ford sedan, a late model sedan, and a Model A Ford sedan. That semi, your Honor, I might clarify it for you. A semi is a trailer that rests on a part of the vehicle drawing it.

The Court: Yes.

The Witness: Whereas, the trailer doesn't.

The Court: I see the picture, and I am familiar with the type, now. I did not know what they called them before. They were all trucks to me.

(Testimony of Lawrence Deming)

Q. By Mr. McKnight: Now, did all of these vehicles appear to be damaged? A. They did.

Q. Will you tell the Court the position in which you found the truck and trailer, if we may refer to it as that, [24] counsel—

The Court: Well, have him identify those pictures that I looked at here, now, and if these are the pictures of the cars that he described and the condition you describe them to be in when you arrived there.

Q. By Mr. McKnight: Officer Deming, I will show you Plaintiff's Exhibit 7 for identification and ask you what that is, if you recognize it.

A. That shows the truck, semi and trailer involved in the accident.

The Court: That picture was taken after your arrival?

The Witness: Yes, it was, your Honor.

The Court: By either you or your—

The Witness: By Sergeant Gill.

The Court: And that picture is a true representation of the position of the truck and trailer when you arrived?

The Witness: It is, your Honor.

Q. By Mr. McKnight: And of its condition?

A. Yes, it is.

Mr. McKnight: We ask that it be introduced into evidence, if your Honor please, as Plaintiff's Exhibit next in order.

The Court: Well, it will take the identification number.

Mr. McKnight: As Plaintiff's Exhibit No. 7. [25]

Mr. Deutz: No objection.

The Clerk: Plaintiff's Exhibit No. 7 admitted into evidence.



(Testimony of Lawrence Deming)

(The photograph heretofore marked Plaintiff's Exhibit No. 7 for identification was received in evidence.)

Mr. McKnight: I neglected to show counsel which one this was.

Mr. Deutz: That is all right.

The Court: The next one you showed me was the station wagon.

Mr. McKnight: Well, if I may, I would just like to keep—

The Court: I don't care.

Mr. McKnight: —these more or less in groups as to the various vehicles.

Q. I show you here Plaintiff's Exhibit No. 4 for identification, and I will ask you what that is, if you recognize it?

A. That shows the rear end of the trailer as it was when I arrived at the accident.

Q. That is the same vehicle that is in Plaintiff's Exhibit 7?

A. Yes, it is.

Q. The one you just testified to?

A. Yes, it is. [26]

Q. And there is a body of a person underneath that vehicle. Did you identify that person?

A. Later we identified him, yes.

Q. And who was it?

A. It was one of the occupants of the Navy station wagon.

Q. Do you remember which one, what his name was?

A. We later identified him as Richard Francis Rogers.

Q. And is this a true representation of the conditions as you found them there at the time you arrived?

A. Yes, it was.



(Testimony of Lawrence Deming)

Mr. McKnight: We ask that this be introduced as Plaintiff's Exhibit No. 4.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit 4 admitted in evidence.

(The photograph heretofore marked Plaintiff's Exhibit No. 4 for identification was received in evidence.)

Q. By Mr. McKnight: I show you a third photograph, which is Plaintiff's Exhibit 8 for identification, and which is another view of the truck and trailer, and ask you if that is a true and correct representation of the condition of those vehicles and their positions on the highway as you found them when you arrived at the scene of the accident? A. Yes, it is.

Mr. McKnight: We ask that it be introduced as Plaintiff's [27] Exhibit No. 8, your Honor.

The Court: Admitted.

The Clerk: No. 8.

(The photograph heretofore marked Plaintiff's Exhibit No. 8 for identification was received in evidence.)

Mr. McKnight: May I pull this over in this area, your Honor (indicating blackboard with drawing thereon)?

The Court: All right.

Mr. McKnight: Mr. Deming, will you step down here, please?

The Court: Just a moment.

On your Exhibit 4, right at the head of the body is a large object. Can you identify what that is?

The Witness: That was a block of wood, your Honor, I believe.

The Court: A block of wood?

The Witness: Yes.

(Testimony of Lawrence Deming)

The Court: And the others are tools?

The Witness: Yes.

The Court: A jack?

The Witness: Yes, sir, a jack.

The Court: Strips of wood?

The Witness: Strips of wood.

The Court: Metal?

The Witness: Metal. [28]

The Court: That came from the trailer?

The Witness: It came—Well, I wouldn't say where they came from.

The Court: And they were strewn on the pavement in that fashion?

The Witness: Yes.

The Court: You did not ascertain where that jack came from?

The Witness: No, sir, I didn't, your Honor.

The Court: Nor the block of wood?

The Witness: No.

The Court: All right.

Mr. McKnight: May I see that, your Honor? I wasn't putting any significance on it.

Q. Did you see that jack in that position when you first arrived, or do you have any independent recollection of it?

A. As I recollect, the jack and the block of wood were not there.

The Court: When you first arrived?

The Witness: When I first arrived. They were brought from the truck. We were going to jack the truck up.

The Court: Oh, in order to extricate the body?

(Testimony of Lawrence Deming)

The Witness: And then we had to wait until the coroner arrived. [29]

The Court: All right.

Mr. Deutz: To avoid confusion, I think we can stipulate that that block and jack were put there after the accident happened.

Mr. McKnight: Well, I have no knowledge one way or another, your Honor.

The Court: Well, he testified that they weren't there, now.

Mr. McKnight: They are of no significance to me.

The Court: But I didn't know. They might be—

Mr. McKnight: By the way, before we get onto the position of those cars, you showed me pictures of the Ford and station wagon. What are those exhibit numbers?

Mr. Deutz: They are mixed up now, your Honor.

The Court: I will find them.

Mr. McKnight: What I intended to do, if it meets with your Honor's approval, would be to place and show the photographs of each vehicle together, and then go to the next one.

The Court: Oh, all right. Very well.

Q. By Mr. McKnight: Do you remember this block signal, Mr. Deming? A. Yes, I do.

Q. And its relative relationship to the position of these vehicles? A. I do. [30]

Q. Would you take a piece of chalk and place the position of this truck and trailer as it appeared there on the highway, when you first saw it, keeping in mind, if you will, that each one of these lanes of traffic, according to our stipulation, is about 11 feet in width—I mean, so that it will give some degree of proportion to your posi-

(Testimony of Lawrence Deming)

tions—and if you desire to look at Plaintiff's Exhibit No. 7 for refreshing your memory, I don't think there will be any objection.

A. Well, I was going to refer to my diagram that I made that night.

Mr. McKnight: All right. Use your diagram.

The Court: You have your diagram there before you?

The Witness: Yes.

The Court: All right.

The Witness: Do you wish to see it?

The Court: No, no, no. The government has seen it. Have you seen it?

Mr. Deutz: Yes.

The Court: All right. Well, let me look at this diagram. Maybe you can save a lot of drawing around here.

Mr. McKnight: I have never seen it, your Honor, it so happens.

The Court: Well, look at it and then show it to me.

The Witness: That was made up from the originals, your [31] Honor.

The Court: You made the originals?

The Witness: They were pretty well scribbled that night. We made the originals and then drew this up.

The Court: Oh, then you redrafted this?

The Witness: Yes, that is right.

The Court: When you had more time?

The Witness: That is right.

Mr. McKnight: Your Honor, I have not objection to the use of this in evidence, unless the witness has.

The Court: Well, you can have photostats made of it. Have you a photostat machine here, Mr. Clerk?

(Testimony of Lawrence Deming)

The Clerk: No, your Honor.

The Court: Let me see it. I don't mean to suggest that you shouldn't try the case the way you wish to try it, but it seems to me this would save an awful lot of drawing.

Mr. McKnight: It would.

The Court: Then, here is another diagram here which shows skid marks and everything else. It seems to me if you could have photostat of those made—

Mr. Deutz: I may have a photostat of that, your Honor.

The Court: —it would seem to me to be exceedingly convenient.

Mr. McKnight: It would serve my purpose.

The Court: And it would serve your purpose to elicit [32] from this witness the testimony he is about to give and save a lot of time.

Mr. McKnight: Yes, your Honor.

The Court: Is there a photostat place in Fresno?

The Clerk: I think so, your Honor.

Mr. McKnight: May we ask the officer if there would be any objection—

Mr. Deutz: I have a photostat of that, your Honor.

The Court: Is this a typical government photostat so that you have to have an extra pair of microscopic glasses to read them?

Mr. Deutz: No. These are very legible, your Honor. They do a pretty good job.

The Court: Are these extra?

Mr. Deutz: No, they are not extra. They are my own copies, but if they will speed matters up, you can use them.

(Testimony of Lawrence Deming)

Mr. McKnight: Would there be any objection to using the originals in evidence, Mr. Deming, with the understanding that we would have photostats made and return the originals made by you?

The Witness: No. You can check with my boss, Mr. McKnight, Sergeant Gill.

The Court: Is there any objection to that, Sergeant Gill?

Capt. C. K. Gill: No. I would like to go over with [33] them and watch them when they are made, because there is no doubt, we will have to go in court again on the matter.

The Court: You want to be able to testify or have someone testify that that has been in your possession all the time?

Capt. Gill: You are right.

Mr. McKnight: Mr. Deutz, could we use a photostat in evidence?

Mr. Deutz: That is the only one I have. I have no objection to your using it in evidence, if you so desire. There is no conflict so far as we are concerned on the officer's testimony.

The Court: Very well. So, if you wish, Mr. McKnight, you can go with the officer at noon and have photostats made.

Mr. McKnight: I don't want to do it. I have other things to do during the noon recess.

Capt. Gill: If the officer wants to copy it off at noon, an exact copy of that, they can have our copy and then we keep the original.

The Court: Well, the photostat, this is the one we need.

(Testimony of Lawrence Deming)

Mr. Deutz: Your Honor, supposing they testify from that and then, if this is necessary for the record, then you can use this.

The Court: Well, he has to have a copy. [34]

Mr. Deutz: Suppose, for the record, you introduce this copy, give it back to me and you can testify from that one.

The Court: We can't give it back to you if it is in evidence.

Mr. Deutz: I mean, give it back to me for my use during the trial.

The Court: Oh, it is available for anybody's use.

Mr. Deutz: That will save a lot of confusion. I would like to check it.

The Court: Maybe, Mr. McKnight, the officers this noon could get this done and you could pay them for it.

Mr. McKnight: Yes, your Honor. I could do that. Anyway, that is the quickest and most convenient.

The Court: And then you have available an extra photostatic copy of it, so it is here. In the meantime, let these be marked so I can be looking at them.

Mr. McKnight: They don't have to be marked, I guess.

The Court: And when you get them, get white photostats so I can read them.

Mr. McKnight: If they are available, your Honor.

The Court: This noon, will you get that photostated, Mr. Officer, and present the bill to Mr. McKnight and he will pay it, pay you for it?

The Witness: Yes. [ 35]

The Court: You don't have to take it out now. Both of them there. We are going to come to the other one in a minute or somebody is.



(Testimony of Lawrence Deming)

Mr. McKnight: Then, we ask that the two diagrams made up by the officers from their observations and measurements at the scene of the accident be introduced in evidence as plaintiff's exhibits next in order.

The Court: 13.

Mr. McKnight: Plaintiff's Exhibit 13.

The Clerk: Plaintiff's Exhibit 13 in evidence.

The Court: They will be marked and immediately returned to the officer so he may testify from them and get them photostated this noon and return the photostats this afternoon.

Mr. McKnight: Yes, your Honor.

The Court: Will you do that?

The Witness: Yes, your Honor.

(The diagrams referred to were marked Plaintiff's Exhibit No. 13, and were received in evidence.)

Mr. McKnight: They are both the same exhibit, I assume?

The Court: Yes.

The Clerk: Yes, 13 in evidence, two sheets.

Mr. McKnight: All right. You may again take the witness stand, if you will.

(Witness returns from blackboard to witness stand.) [36]

Q. By Mr. McKnight: Now, Officer, will you state for the record the distance from the front of the trailer to the rear of the station wagon as you measured it there that night?

A. From the right rear of the station wagon south to the right front of the trailer, we measured it 40 feet 8 inches.



(Testimony of Lawrence Denning)

Q. Well, what is the distance as you measured it from the rear of the trailer to the left front of the Ford sedan?

A. From the left—

The Court: From the nearest portion of the trailer to the Ford?

Mr. McKnight: Well,—

The Witness: That is right, from the left rear of the trailer, that is the nearest portion to the Ford, to the left front of the Ford sedan, was 93 feet 10 inches.

Q. By Mr. McKnight: What was the distance from the white center line to the left front corner of the Ford sedan?

A. The left front corner of the Ford sedan to—west to the white center line was 31 feet 10 inches.

The Court: 31? It says 32, 11 here.

The Witness: From the left front of the green Ford sedan to the white center line—

The Court: To the white center line, 32, 11, Does your diagram show that? [37]

The Witness: 31 feet 10 inches, your Honor.

The Court: Let me see the diagram. It says 32 feet 11 inches. This must be another diagram.

The Witness: This was drawn from the original.

Mr. Deutz: I did not compare all of the figures. I compared most of them.

The Court: Well, it is 31 feet 10 inches?

The Witness: 31 feet is what I had.

The Court: This is a photostat here.

Q. By Mr. McKnight: What is the distance from the white center line to the left rear of the Ford sedan?

A. From the left rear of the Ford sedan west to the white center line is 24 feet 8 inches.

(Testimony of Lawrence Deming)

Q. Did you look at the highway to determine if there were any marks left upon the surface of the highway by any of the various vehicles involved in the accident?

A. We did.

Q. When you arrived at the scene of the accident, what was the condition in so far as weather was concerned?

The Court: What was his last answer to the last question?

Mr. McKnight: "We did."

The Witness: We did look for marks on the pavement.

The Court: Did you find any?

The Witness: I didn't find any. [38]

The Court: What have you marked here, "Gouge Marks"?

The Witness: That is—At the time we arrived, we found no marks. Those marks were found later.

The Court: You mean the next day?

The Witness: No. These marks, I believe, you are referring to, your Honor, we found those later on in the evening.

The Court: Oh, later on in the evening?

The Witness: Yes, after we had a chance to really look around.

The Court: What do you mean by gouge marks?

The Witness: They are made by a sharp instrument, possibly by a sharp instrument. They dig into the pavement.

The Court: Were they fresh?

The Witness: So far as I could see, they were.

The Court: Did they appear to you to be freshly made?

The Witness: They were there, your Honor. It is pretty hard to say whether they were fresh, due to the wetness of the road.

(Testimony of Lawrence Deming)

The Court: What were they, double marks here, like you have them?

The Witness: Yes, they were just about an arc.

Mr. Deutz: Which set of marks, gouge marks, are those?

The Witness: They are southwest of the green Ford sedan. [39]

The Court: I don't see any other set that appears. They appear to be the only ones indicated here.

Mr. Deutz: I believe the second photostat will show them.

These are southwest of the Ford sedan?

The Witness: Yes.

Mr. McKnight: On the first page of the exhibit, if your Honor please, they are right in here (indicating).

The Court: Yes. Well, those are the ones I am talking about, but I don't see any other gouge marks indicated.

Mr. McKnight: I think they are on the other page.

The Court: On either page.

Mr. McKnight: These here (indicating), your Honor.

The Court: Oh, I see now.

Mr. McKnight: Now, we are talking to these which were the closest to the position of the Ford sedan at the present time.

The Court: And the most southerly?

Mr. McKnight: And the most southerly of all the gouge marks that were found there.

The Witness: That is right.

The Court: Did they appear to be made by metal? I mean, was it the rim of a wheel?

The Witness: I couldn't say, your Honor. Just these two distinct gouge marks in the pavement made by a sharp [40] instrument.

(Testimony of Lawrence Deming)

The Court: Well, how long were they?

The Witness: That I couldn't say, how long they were. They weren't over a foot, if I recollect now.

The Court: There were two, parallel?

The Witness: That is right. They were as close as I can remember, about six inches apart.

The Court: All right.

Mr. McKnight: I realize that this is asking, in a sense, for your conclusion, but I will put it this way:

Q. At the time you looked at them, noticed them and put them down on your diagram, did it appear to you, to the best of your ability, to describe them, that they were fresh marks and not old marks?

A. Well, as I say, Mr. McKnight and your Honor, it was raining at the time we were taking these measurements, and it is pretty hard to tell whether they were made fresh or old ones. They were there, so we put them in.

The Court: Well, this was concrete pavement?

The Witness: That is right.

The Court: You have seen practically broken concrete and some broken concrete?

The Witness: Yes.

The Court: Were they put in with that idea in mind?

The Witness: Yes. [41]

The Court: But you couldn't reach a conclusion?

The Witness: We saw them there and we put them in.

The Court: Excuse me for interrupting.

Mr. McKnight: It is all right.

Q. You have investigated many accidents, have you not? A. Yes, that is right.

Q. It is not uncommon in connection with an accident to see marks of this type, is it?

A. That is right.

(Testimony of Lawrence Deming)

Q. (Continuing) Caused by axles or other parts of a vehicle hitting the pavement during the accident?

A. That is right.

Q. All right. Those marks, these most southerly marks that we have referred to were on what side of the white line?

A. They were east of the white line.

Q. And how far east of the white line?

A. Approximately four feet to the gouge mark, that is the closest to the white line.

Q. You said that they were, according to your memory, something less than a foot long?

A. That is right.

Q. And in the position shown on your diagram?

A. That is right.

Q. I believe you stated that they were southwesterly [42] from the Ford sedan?

A. That is right.

Q. How far were they from the rear of the Ford sedan?

A. From the left rear of the Ford sedan to the north point or north portion of the gouge mark that is closest to the east shoulder was 33 feet.

Q. All right. Did you see some other gouge marks of similar nature on the pavement there that night?

A. Not that night, Mr. McKnight.

Q. These were the only ones you actually saw that night?

A. That is right.

Q. Did you go out there the next day and look for them?

A. We went out the next day.

Q. About what time?

A. I couldn't tell you that. Sometime in the morning.

(Testimony of Lawrence Deming)

Q. Sometime in the morning. And did you find some other gouge marks at that time?

A. We did.

Q. And are they on your diagram?

A. They are on the second diagram.

Q. On the second page of the diagram. And in what lane of traffic were they? [43]

A. They were in the southbound lane of traffic.

Q. In about the position that you have them there on your diagram, is that right?

A. That is right.

Q. Did you make any measurements from these gouge marks to this block signal?

A. Well, at a point opposite the block signal, at a point opposite, west, we stepped off or measured off 77 feet to a point opposite the gouge marks, the most southerly gouge marks. To make it clear, your Honor, from a point opposite the block signal, we measured off 77 feet to the gouge mark south.

The Court: I see. Due south?

The Witness: That is right.

The Court: At right angles?

The Witness: That is right.

The Court: From the block signal.

Q. By Mr. McKnight: Did you make any measurement from the one set of gouge marks to the other?

A. No, we didn't, Mr. McKnight.

Q. You didn't. You say it was raining when you got there, Officer?

A. I don't remember whether it was raining when we arrived or not.

(Testimony of Lawrence Deming)

Q. What was the condition of the highway? You said [44] it was wet? A. It was wet.

Q. Was it slippery? A. Yes, it was.

Q. Do you remember, was this the first rain of the season? A. Yes, it was.

Q. The first rain of the season. From your experience, do you find that the first rain of the season makes the pavement more slippery or less slippery than after it has had plenty of time to be washed off?

A. It seems to be more slippery at that first rain of the season, due to the oil on the road, when the oil makes it slippery.

Q. There that night did you examine the pavement to see if you could find any indications of rubber marks or skid marks? A. Yes, we did.

Q. Upon the pavement? A. Yes, we did.

Q. Were you able to find any?

A. Didn't find a rubber mark of any kind.

Q. And do you know why?

A. Due to the wetness of the road.

The Court: You found none on the road? [45]

The Witness: None at all, your Honor.

The Court: Did you go back there the next day?

The Witness: Yes, we went and we looked, and that is when we found these other gouge marks, and there were no other marks on the road, on the paved road.

The Court: And you found those other skid marks—gouge marks, on the shoulder?

The Witness: That is right.

The Court: Were they on the shoulder?

The Witness: They were on the shoulder.

The Court. And dirt?



(Testimony of Lawrence Deming)

The Witness: And dirt.

The Court: You are going into those later, are you?

Mr. McKnight: No, except as they show on the diagram is all I had in mind.

The Court: Well, on the second page, on your diagram you have "Black Skid Marks," in sort of an arc on the left. Were they skid marks indicating two wheels, a two-wheel skid?

The Witness: Offhand, I don't remember, your Honor.

The Court: That is, double from the truck?

The Witness: I don't remember.

The Court: Or single?

The Witness: I couldn't tell you.

The Court: You don't recall?

The Witness: I don't recall. [46]

The Court: Do you remember as to the other skid marks, the two that lay northerly of those?

The Witness: They were single, I believe.

The Court: The two skid marks, the longer skid marks, did they appear to be parallel at a distance from one another as would be made by one vehicle?

The Witness: Yes, they did.

The Court: And likewise, the other two, or were they closer as if they were made by two vehicles?

The Witness: No. They appeared to have been made by one vehicle.

The Court: The distance between the pairs, that is, between each skid mark in each pair is not indicated here, but from your position on the drawing it appears that the long skid marks are further apart from one another than the short skid marks. Did you intend to indicate that, or do you recall?



(Testimony of Lawrence Deming)

The Witness: I don't recall, your Honor.

The Court: All right.

Q. By Mr. McKnight: Now, Officer, you stated that when you arrived there, you found a station wagon there?

A. Yes, I did.

Q. Did you ascertain what kind of a station wagon it was, that is, did it have a name printed on it or anything?

A. It had. I remember it was just the letters "USN" [47] on the station wagon, printed on the station wagon.

Q. I take it there is no question about it, "U. S. Navy" was printed on the other side?

A. Yes, that is right.

The Court: And it was a Ford?

The Witness: Yes, and it had a number on it.

The Court: Well, they stipulated to it.

The Witness: Five or six numbers, rather.

The Court. Five or six digits?

The Witness: That is right.

Q. By Mr. McKnight: I show you a photograph of what purports to be the Navy station wagon and ask you if that is the condition and position of that Navy station wagon as you found it there on the highway when you arrived there?

A. That is the position I found it in, yes.

Q. And does that truly and correctly represent all conditions as they were at that time in so far as they appear in the picture?

A. Yes, it does.

Mr. McKnight: We ask that it be introduced into evidence, your Honor, as Plaintiff's Exhibit No. 6.

The Court: Admitted.

The Clerk: No. 6 in evidence.

(Testimony of Lawrence Deming)

(The photograph heretofore marked Plaintiff's Exhibit No. 6 for identification was received in evidence.) [48]

Q. By Mr. McKnight: Regarding that last photograph, the camera is facing in a southerly direction, is it not? A. That is right; facing south.

Mr. McKnight: And then, as his Honor was looking at it, the vehicle right directly behind the station wagon is the truck and trailer that you have already described.

Q. I show you another photograph which purports to be the front end of a vehicle and ask you if that is a true and correct representation of that same Navy station wagon as you saw it there at that time?

A. Yes, it is.

The Court: What day of the week was that?

The Witness: I will find it here.

The Court: I have a calendar here. In 1946, you say in July?

Mr. McKnight: July 24, 1946.

The Court: July 24, 1946, was a Wednesday.

The Witness: Wednesday, that is right.

Q. By Mr. McKnight: Did you identify this one?

A. Yes, I did. That is just the one I identified.

Mr. McKnight: We ask that this last photograph be introduced as Plaintiff's Exhibit No. 5.

The Court: In evidence.

The Clerk: No. 5 in evidence. [49]

(The photograph heretofore marked Plaintiff's Exhibit No. 5 for identification was received in evidence.)

Q. By Mr. McKnight: I show you a third photograph which purports to be a photograph of the same vehicle, the Navy station wagon, which, as indicated by the picture,

(Testimony of Lawrence Deming)

was taken in the daylight. Does that, in so far as you can see, truly represent the condition of that vehicle as you saw it there?

A. Yes, it does, except that it was taken in a different place.

Q. In a different location?

A. That is right.

Q. But the condition of the vehicle is the same as you saw it that night?

A. It appears to be the same vehicle.

Mr. McKnight: We ask that that be introduced as Plaintiff's Exhibit No. 2.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit 2 admitted into evidence.

(The photograph heretofore marked Plaintiff's Exhibit No. 2 for identification was received in evidence.)

Q. By Mr. McKnight: Now, I show you another photograph of a Ford sedan automobile and ask you if that is a true and correct representation of the Ford sedan automobile, [50] as you saw it there that night, both as to its condition and as to its position on the road?

A. Yes. That is the way I saw it.

Q. Now, the vehicle which is just behind the Ford sedan is the Ford automobile that you described as being occupied by some colored people, is it not?

A. That is right.

Q. Both of those vehicles and everything in that picture truly represents the condition there, in so far as it appears from the picture, is that right?

A. That is right.

Mr. McKnight: And you can even see one of the colored people in the automobile, your Honor. We ask

(Testimony of Lawrence Deming)

that it be introduced into evidence as Plaintiff's Exhibit No. 3.

The Clerk: No. 3 admitted into evidence.

(The photograph heretofore marked Plaintiff's Exhibit No. 3 for identification was received in evidence.)

The Court: By the way, have you subpoenaed the colored people?

Mr. McKnight: No, your Honor.

The Court: Did you talk to them that night?

The Witness: I talked to them that night.

The Court: Did you ascertain whether or not they had seen the accident?

The Witness: They told me they were sleeping on the [51] ground and it started to rain and they climbed into the car and they were just dozing, and they didn't see a thing.

Q. By Mr. McKnight: And, as I understand—this has nothing to do with this case, but they were sleeping between the automobile and the road, isn't that right?

A. No. They had been sleeping on the ground.

Q. Between the automobile and the road?

A. Between where this Ford sedan bumped, and they climbed back into the car.

The Court: Some angels picked them up and put them back in the car.

Q. By Mr. McKnight: They knew nothing about the accident at all?

A. They said they had been dozing and didn't see a thing.

The Court: This is in evidence, No. 3.

Mr. McKnight: All right.

(Testimony of Lawrence Deming)

Q. And I will show you a last photograph, which has been marked Plaintiff's Exhibit No. 11 for identification, which I believe was taken there the next day. Does that correctly represent the physical situation there as it existed on the night of the accident, in so far as positions of trees, roadway, shoulders, and that kind of thing is concerned?

A. I believe so, yes. I was with Sergeant Gill in [52] the photo.

Q. Does that photograph pick up the gouge marks that you have described?

A. As far as I can see, these apparently are the two gouge marks we referred to, but I won't say offhand.

Q. Well, are you sure of that? They look just like spots in the negative, to me.

A. That is right. I wouldn't say. That is the apparent position of those gouge marks in relation to the white line, but I won't say whether they are gouge marks or not.

Mr. McKnight: We ask that it be introduced in evidence as Plaintiff's Exhibit 11.

The Court: No. 11.

(The photograph heretofore marked Plaintiff's Exhibit No. 11 for identification was received in evidence.)

The Court: Are these other photographs all in evidence?

Mr. McKnight: All the photographs are in evidence, your Honor, that I feel of any—

The Court: Do you have any front end view of the Ford, any one at that time of the Ford sedan?

Mr. McKnight: Yes, I have this one.

The Court: Just put them all in evidence.

Mr. McKnight: All right.

(Testimony of Lawrence Deming)

The Court: Ask him if all these pictures were taken [53] at the time and represent what they purport to represent. There are some more there?

Mr. McKnight: Yes, three more.

The Court: Three more.

Q. By Mr. McKnight: I show you three more photographs, which have been marked Plaintiff's Exhibits 9, 10 and 12 for identification, and ask you if those are all photographs taken at the scene of the accident there?

A. I don't recall that one (indicating).

Q. Referring to Plaintiff's Exhibit No. 9 for identification. Then, I will take that one separately, your Honor.

The Court: All right.

Mr. McKnight: Very well,

Q. Regardless of recalling it, Mr. Deming, does that appear to you to represent truly and correctly the front end of the Ford sedan as you saw it there that night?

A. I didn't see the front end. I looked at the Ford sedan from the left side as it rested against the Ford, the '29 Ford sedan. I never did get around to the front of it.

Mr. McKnight: Well, the witness can't identify it. Counsel, do you desire to stipulate that it be introduced into evidence?

Mr. Deutz: May I see it?

Mr. McKnight: It is immaterial to me. [54]

Mr. Deutz: I have no objection.

Mr. McKnight: We introduce it into evidence, if your Honor please, as Plaintiff's Exhibit 9.

The Court: All right. It may be admitted.

The Clerk: No. 9 into evidence.

(Testimony of Lawrence Deming)

(The photograph heretofore marked Plaintiff's Exhibit No. 9 for identification was received in evidence.)

The Clerk: He has that other one there, too.

Mr. Deutz: This one is already admitted.

Mr. McKnight: All right.

The Clerk: Plaintiff's Exhibit No. 11 in evidence.

Q. By Mr. McKnight: Plaintiff's Exhibit No. 12 for identification is simply another photograph taken the next day to show the general characteristics of the roadway, isn't it? A. That is right.

Q. None of the marks or anything show in that, so far as you can find? A. No, I don't—

Mr. McKnight: We ask that it be introduced in evidence as Plaintiff's Exhibit No. 12.

The Court: While you were there, did the wrecking truck come and take any of the cars away?

The Witness: We called the wrecking truck, your Honor but I don't recall them hauling the cars away. We had [55] other things to do.

The Court: I see. It says, "PHOTO BY Sgt. CLARK GILL," who was with you?

The Witness: He was out at the accident that night, too.

The Court: He took the other photographs?

The Witness: Yes.

The Court: It says, "Looking South at Front of"—"Looking," I don't know whether it is "south" or not—"at front of Ford Sedan," and the license number; "Tow car had pulled same about 3 ft. South. On each shoulder of Road." "7-25-46, at 3:37 a.m."

Mr. McKnight: It is satisfactory to me. Is it to you, counsel?



(Testimony of Lawrence Deming)

Mr. Deutz: Yes. I have no objection.

The Court: "My 1452," photograph by Sergeant Gill. Who took that? He took that, too?

The Witness: That is right.

Q. By Mr. McKnight: Plaintiff's Exhibit No. 10 is a photograph of the trailer, is it not?

A. Well, I don't know whether it is the trailer or semi-trailer. I think it is the trailer.

The Court: No. 12 is admitted.

Mr. McKnight: It is either the semi or the trailer.

The Witness: It is one of the pieces of equipment. [56]

The Clerk: No. 12 is admitted.

(The photograph heretofore marked Plaintiff's Exhibit No. 12 for identification was received in evidence.)

Mr. McKnight: We ask that it be introduced as Plaintiff's Exhibit No. 10, your Honor.

The Court: Very well.

The Clerk: No. 10.

(The photograph heretofore marked Plaintiff's Exhibit No. 10 for identification was received in evidence.)

Mr. McKnight: Those are all of them.

The Court: Are those all of them? All the Exhibits Nos. 2 to 12, inclusive, are admitted into evidence.

Mr. McKnight: I think that is all, your Honor.

The Court: Cross examine.

#### Cross Examination

By Mr. Deutz:

Q. Officer Deming, what type of road is this? Is this a macadam or a concrete road at this point?

A. I believe it is.



(Testimony of Lawrence Deming)

Q. Or black surface?

A. A concrete base.

Q. The top?

A. The top was macadam, I guess they would call it. It isn't a concrete, a smooth concrete. [57]

Q. It is not a concrete surface on top, it is an oiled surface?

A. As I recall, that is right.

Q. Now, these colored people that were in the car that was parked on the side of the highway, did they indicate how long before that they had gotten into the car?

A. No, sir. I don't recall how long they had been there. All I asked them is if they had seen the accident.

Q. Do you know of your own knowledge what time it started to rain that evening?

A. No, I don't; I can't say.

Q. At the time you arrived at the scene of the accident, was it raining at that time?

A. I don't recall that it was raining at the time we arrived at the accident, no.

Q. Had there been a heavy rain at any time that evening?

A. It had rained quite heavily previous to our receiving the call for the accident.

Mr. Deutz: But at one time earlier in the evening.

That is all.

Mr. McKnight: That is all.

The Court: Step down. You get those photostats made and return them, will you, please? Just those two pages.

The next witness. [58]

Mr. McKnight: May I consult with Mr. Deming to tell him where to go? He is from Madera. He may not know the photostating establishment.

The Court: He probably knows more about Fresno than you do.

Mr. McKnight: Maybe.

(Mr. McKnight confers with Officer Deming.)

Mr. McKnight: And get white photostats made. Do you want a copy of those made for yourself?

Mr. Deutz: No. It will not be necessary.

Mr. McKnight: Get about three made.

The Witness: About three of each?

Mr. McKnight: Three of each, yes.

The Court: The next witness.

Mr. McKnight: I will call Mr. Uarte.

The Court: We might have a short recess first.

(Whereupon, a short recess was taken.)

The Court: All right, Mr. Uarte, come forward and be sworn.

### ERNEST JOHN UARTE,

the plaintiff herein, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: Ernest John Uarte. [59]

The Clerk: And your address?

The Witness: 10346 South Paramount Boulevard, Downey.

### Direct Examination

By Mr. McKnight:

Q. What is your age? A. 37, sir.

Q. Are you the plaintiff in this case?

A. Yes, sir.

(Testimony of Ernest John Uarte)

Q. Do you remember this accident that occurred just north of Madera on July 24, 1946?

A. No, sir.

Q. Do you remember anything about it at all?

A. No, sir.

Q. Do you remember where you had been just prior to the happening of this accident?

A. No, sir.

Q. Do you remember anything that occurred or where you were or any event which happened within approximately a month after the accident?

A. No, I don't.

Q. What is the last thing that you remember before this accident happened?

A. The last thing I remember is receiving my discharge from the U. S. Army at Fort MacArthur, and I called [60] up my mother at that time. That is the last I remember.

Q. You have no memory after that at all?

A. No, sir.

Q. Until sometime after the accident occurred?

A. That is right.

The Court: How long prior to the accident was that?

The Witness: I believe that was either in the latter part of November or in the middle of December, your Honor.

The Court: In 1945?

The Witness: Yes, your Honor.

Q. By Mr. McKnight: Is your memory fairly clear as to things that happened before your discharge from the Army?

A. Yes, I remember things I did while I was in the Army.

(Testimony of Ernest John Uarte)

Q. Do you remember where you were, what theatre you were in, and so forth?

A. Yes. I was in the European theatre.

Q. And do you remember before you went into the service, what was your employment?

A. I was working for the Bank of America.

Q. And do you have any memory at all of going back to work for the Bank of America, after you came back from the Army?

A. No, I don't.

Q. Do you have any way of ascertaining whether you had or not? Do you know whether you had, had gone back to work? [61]

A. Yes, I had.

Q. At what branch of the Bank of America?

A. Downey Branch of the Bank of America.

Q. Doing what kind of work?

A. I had charge of the Veterans' Home Loans.

Q. What was the first thing that you remember after this accident?

A. The first thing I recollect after the accident is being in the hospital. I woke up and I was in bed there.

Q. In what hospital?

A. Dearborn, in Madera.

Q. And do you remember about when that was?

A. That was the latter part of August.

Q. Of 19—

A. Of 1946.

Q. Of 1946. And do you know, did you own an automobile?

A. Yes.

Q. At the time this accident happened, you know you owned an automobile?

A. Yes. I owned it.

Q. Do you know who was driving it at the time this accident happened, I mean of your own knowledge, now?

A. No, sir.

(Testimony of Ernest John Uarte)

Q. Do you know who was with you, of your own knowledge? [62]      A. No, sir.

Q. Do you know where you had been?

A. No, sir.

Q. When you woke up in the hospital, did you say the latter part of August or the first part of August?

A. The latter part of August.

Q. (Continuing) The latter part of August, sometime approximately a month after the accident, as you have told—      A. Yes, sir.

Q. —what was your condition at that time as you yourself were able to determine, I mean, not from what your doctor told you, but what did you know after you began to know things?

A. Well, my right leg was in a traction splint and the right side of my chest was sore. I had scars and bruises on my hands and forehead.

Q. Were you in any pain?

A. Yes. My chest was giving me some trouble.

Q. At that time did you have any pain in your head?

A. No. My head had healed by then, I believe.

Q. Including all of the knowledge that you have now, will you describe to the Court where you were hurt, what injuries you received?

A. My right leg was broken midway between the knee and the hip, and I had seven fractured ribs on the right side, [63] and my right lung was punctured and collapsed, and my skull was fractured and I had a lacerated scalp, and I had bruises on my forehead, nose, hands and my elbows and knees, and I had some chipped teeth.

The Court: Chipped what?

The Witness: Teeth.

(Testimony of Ernest John Uarte)

The Court: Teeth.

Q. By Mr. McKnight: Now, starting at the top, Mr. Uarte, you say you had lacerations on your head, and to the best of your knowledge your skull was fractured—How do you know that, I mean, from what do you testify, what your doctor said? A. Yes, sir.

Q. Or something else—And you said lacerations about your scalp. Will you turn your head just a little way. were those scars that you have there on your head, on the right side of your forehead—

The Court: On the right side of your forehead.

Q. By Mr. McKnight: (Continuing)—Were those received in the accident?

A. To the best of my knowledge, yes.

Q. At least, you had them when you woke up?

A. Yes.

Q. You did not have them before?

A. No. [64]

Q. At that time did they give you trouble?

A. Sure, they did.

Q. In what way?

A. They couldn't heal them. They had trouble, difficulty, in healing the scars, the wounds.

Q. For how long did that difficulty in superficial healing take?

A. They did not heal until I left the hospital sometime.

Q. How long were you confined to the Dearborn Hospital?

A. Over four months; 125 days, it was.

Q. And during all that time were you in bed or were you up and around any part of the time?

A. I was in bed until about the last 7, 10 days.

(Testimony of Ernest John Uarte)

Q. And during that period you were there, what would you say about your memory? I don't mean your memory in so far as the period with reference to which it was completely blank was concerned, but while you were in the hospital, could you remember things that happened, then, clearly and distinctly, or did you have difficulty?

A. I had difficulty. I couldn't remember things. I was later told that friends were in to see me and I would recognize them but as soon as they left the room. I would completely forget that they had been there. [65]

Q. And during that period of time, did you have considerable pain or not?

A. Yes. As I said before, my chest was bothering me quite a bit.

Q. Can you describe the type of difficulty you were having with your chest?

A. Yes, sir. It was a sharp pain. Every time I would take a breath, it felt like a knife was being jabbed into my chest.

Q. Has that ever entirely cleared up or not?

A. No, sir. It still gives me trouble.

Q. And all the time, or just on certain occasions?

A. Not all the time; certain occasions.

Q. Any thing connected with weather or what you do, work or efforts, I mean, is there any way you can describe when it occurs or when it doesn't, or is it just hit and miss?

A. Well, if I exercise, it bothers me, and a change of climate does also.

Q. All right. You say what part of the time of the little over four months you were in the hospital—what part of the time were you able to be up and out of bed?

A. About the last 7 or 10 days, I believe.



(Testimony of Ernest John Uarte)

Q. Before that, what kind of treatment were you given or did they give you, while you were in bed?

A. They had my leg in traction, in a traction splint, [65-A] and—

Q. What is that? Will you describe it?

A. Yes.

Q. Did they hoist it up in the air? A. Yes.

Q. Did you lie flat?

A. Your leg is raised up in the air and they have pulleys—that pulled your foot out toward the front, and then they have pulleys that keep your leg, that pull the top part of your leg back, keeping your bone separated there.

Q. And were you under that kind of treatment at the hospital until the time they let you get up out of bed, at the hospital? A. Yes, yes.

Q. When you were able to get up, during that last week or ten days, were you up, then, all the time, or were you just up and down?

A. The first time I lasted about two minutes, I believe, and they had to put me back in bed because I was about ready to pass out, and then, from then on, it was just longer periods every day.

Q. When you left the hospital, was your leg still in any kind of a cast or not?

A. Yes; it was in a brace.

Q. In a brace? [66] A. Yes.

Q. What kind of a brace?

A. Well, it was a steel brace. It kept me from putting my weight on my leg. There is an attachment to the bottom of my shoe, so that the full weight of my body rested on my hip instead of on my leg.



(Testimony of Ernest John Uarte)

Q. How did you leave the hospital? Did you walk out or did they carry you out on a stretcher or a wheelchair, or how did you leave? A. I walked out.

Q. To what?

A. To a car that my cousin had there, and he took me home. I had a pair of crutches. I was on crutches.

Q. After you got home, were you up all the time from then on, or were you up and down from your bed?

A. I was up and down. I would get up, but then I would have to sit most of the time, because I was very weak.

Q. And how long did that up and down continue, last, would you say, after you got home from the hospital?

A. Oh, I don't remember, as I—about three weeks or so.

Q. And at the end of that time, were you still on crutches or were you able to discard them?

A. Oh, no. I didn't discard my crutches until quite some time later. [67]

Q. About how long?

A. I think it was Mother's Day. I know I gave my mother a scare. I think it was about that time, whatever date that is.

The Court: In 1947?

The Witness: 1947, yes, sir.

Q. By Mr. McKnight: What do you mean, gave her a scare?

A. She thought I was out of my mind.

Q. Well, what did you do?

A. I got out of bed and took off my brace and threw my crutches away. I got tired of wearing them.

(Testimony of Ernest John Uarte)

Q. Then, were you able to get along without them, after that?      A. Yes, I was.

Q. Or did you have to get them back?

A. No, I didn't have to get them back.

Q. You didn't take them back after that?

A. No, I didn't.

Q. Are you still wearing the braces?

A. That is when I threw the braces away.

Q. You used crutches as long as you had the braces?

A. Yes, sir.

Q. You say Mother's Day. You mean what day—  
Put it this way— [68]

The Court: Well, it comes in May or June—May, usually.

Q. By Mr. McKnight: of 1947?

A. 1947, yes.

Q. And did you finally—Have you ever gone back to work, Mr. Uarte?      A. Yes, sir, I have.

Q. What date did you go back to work?

A. I don't recall what day it was, but it was in February, I believe, for part time.

Q. Of what year?      A. 1947.

Q. February of 1947?      A. Yes, sir.

Q. So, when you went back to work, you were still in braces and still wearing crutches?

A. Yes, sir.

Q. And can you state about when in February, about the middle of the month, or first of the month, or the last of the month, to the best of your memory?

A. I believe it was around the first of the month, but I am not sure, sir.

Q. Around the first of the month.

(Testimony of Ernest John Uarte)

The Court: When did you start working full time?

The Witness: I believe I worked part time for about [69] a month or a month and a half.

Q. By Mr. McKnight: And that started at about the first of February? A. Yes.

Q. And then after that, you worked full time?

A. After February?

Q. No. After about a month and a half, after?

A. Yes, sir.

Q. Then, full time?

A. When I first went back to work, it was only for about an hour a day.

Q. I see. Now, have you counted up at any time the amount of wages that you would have received from the bank during the period that you were not working?

The Court: Can't you and counsel stipulate to that during the noon hour? Is there any question about it?

Mr. Deutz: No. I think we can work that out.

The Court: Why don't you work out a stipulation on that and the doctor bills, if you have them, and hospital bills—

Mr. McKnight: I think we can.

The Court: —whatever they are, because it just takes time to put them in evidence and nobody ever fights about them. I would like to ask him a question on the subject.

Mr. McKnight: Yes, your Honor. [70]

The Court: You said you knew where you were when you were in the hospital?

The Witness: Yes, your Honor.

The Court: Could you remember—Did your mental powers come back fully at that time or gradually?

The Witness: Gradually.

(Testimony of Ernest John Uarte)

The Court: When did you first recover fully your mental powers, or have you fully recovered them now?

The Witness: I don't believe I have. I still have difficulty in concentrating, and I forget.

The Court: Well, do you have any difficulty in recollecting things?

The Witness: Not now, no.

The Court: Not now?

The Witness: No, sir.

The Court: When did you fully recover that quality?

The Witness: That was quite some time after I went to work. I had difficulty when I went back to work. I know I would be waiting on a customer and I would go back, I would look up his records and then I would go back to the counter and forget who I was waiting on.

The Court: About how long, about a month after you went back to work, would you say?

The Witness: It was more than that.

The Court: Two months? [71]

The Witness: It was about three or four months.

The Court: Then, you would say along in the middle of the year, early 1947, your mental faculties so far as memory, regained its normalcy?

The Witness: Yes, I would say about that.

The Court: You now have difficulty concentrating, you say?

The Witness: Yes.

The Court: Well, is the difficulty as a result of physical pain or your power to control your mental processes?

The Witness: Just my power to control my mental processes, I believe. I don't have pain at all times in my head, but I do have a ringing in my head, and when I become nervous, that is when I have most of my difficulty.

(Testimony of Ernest John Uarte)

The Court: When you become nervous?

The Witness: Yes.

The Court: Do you get nervous frequently now?

The Witness: Yes, I do.

The Court: What makes you nervous? I mean, under what circumstances?

The Witness: Just a high tension.

The Court: When you get to working hard?

The Witness: Yes, sir.

The Court: Are you married?

The Witness: No, sir. [72]

The Court: And no children?

The Witness: No children.

The Court: And you haven't been married?

The Witness: No, sir.

The Court: And you live at home with your mother?

The Witness: Yes, and my folks.

The Court: And your father?

The Witness: And my father.

The Court: And sisters and brothers?

The Witness: I have a sister at home.

The Court: Well, do things about the house make you nervous?

The Witness: It is generally my work.

The Court: It is generally your work?

The Witness: Yes, worry about it.

The Court: All right.

Q. By Mr. McKnight: Do you remember things, now, at the present time as clearly and as well as you

(Testimony of Ernest John Uarte)

believe you did before the accident? Do you think you have made a complete recovery of your memory now, or not?

A. Well, I still have trouble in remembering things, although I believe my memory is almost back to normal.

Q. You say you have a ringing, you feel a ringing in your head or in your ears at times?

A. Yes. [73]

Q. Particularly when you get nervous? A. Yes.

Q. Is that accompanied with any pain at all, any type of headache or ache of any kind, or can you describe it?

A. It is just a ringing in my left ear and occasionally I do have a stab of pain in my head, but not very often.

Q. Do you now experience or did you ever, during the last, we will say month or two, so his Honor will know what I mean—Have you ever experienced any feeling of dizziness or nausea or anything of that kind?

A. No, sir, I haven't.

Q. You have not? A. No, sir.

Q. All right: What about these teeth? How many teeth were broken? A. I have four.

Q. Have they been repaired or not?

A. No, they haven't; I haven't had a chance.

Q. Do they give you any pain or not?

A. Yes; when I eat sweets.

Q. Which teeth are they?

A. I have a molar back here that is chipped (indicating). I have a molar there in back that is cut in half (indicating), and this tooth here is chipped (indicating), and I have this tooth here (indicating). [74]

Q. Can I see it? A. Yes.

Q. Those still have to be fixed? A. Yes.

(Testimony of Ernest John Uarte)

Mr. McKnight: There is one item of damage I may have to go into. Possibly I am anticipating. I might ask one or two questions.

The Court: What is that?

Mr. McKnight: He needed nursing care while he was in the hospital and his mother and sister were there, and he has reimbursed them for their actual expenses while they were taking care of him. Would there be any objection to that?

Mr. Deutz: I am afraid I could not stipulate to that.

Mr. McKnight: I anticipated that.

Q. While you were in the hospital, did you require nursing care? A. Yes, I did.

Q. Did you hire nurses for some time?

A. I hired a special nurse for a while, and then my mother and my sister took turns taking care of me. One stayed at night and the other during the day.

Q. Have you reimbursed them for any expenses while they were living in Madera and taking care of you?

A. Yes. I reimbursed them for their hotel expenses.

Q. What was that? [75]

A. It was \$125.00 I gave them.

Q. \$125.00? A. I believe it was.

Q. To refresh your memory, you told me \$175.00.

A. I believe that was it.

Q. Now, which was it? A. It was \$175.00.

Q. You talked about a brace, Mr. Uarte.

The Court: How long were they there?

The Witness: My sister stayed there until I left the hospital.

The Court: Well, how long was that, a month, about?

The Witness: That was four months.



(Testimony of Ernest John Uarte)

The Court: Four months?

The Witness: Yes.

The Court: And your mother was there how long?

The Witness: I believe she was there three or four weeks.

The Court: Other than paying their hotel bill, you paid them no money?

The Witness: No.

Q. By Mr. McKnight: You say it was necessary for you to wear a brace? A. Yes.

Q. What did the brace cost you? [76]

A. \$75.00.

Q. Will you describe to his Honor what the wearing of this brace consisted of after you left the hospital; I mean were you able to take it off and put it on, and handle it yourself, when it was on or not?

A. No, sir. My sister or mother had to take the brace off and put it on. It was rather cumbersome and I couldn't bend my leg.

Q. Was this every time it was put on and off?

A. Yes.

Q. Somebody had to do it? A. Every time.

Q. And when you were walking with the brace, and so forth, were you able to go places alone, I mean locally, so that you could get back for help for taking it off and on, I mean, were you able to go downtown alone or not?

A. No, sir. I wasn't. I wasn't able to walk that far.

Q. And whenever you went any place, did someone have to take you?

A. Yes, my sister usually went with me.



(Testimony of Ernest John Uarte)

Q. If you went out of town, like coming up here to Fresno on any business occurrence, for instance, when depositions were taken in the other case in the State Court, how did you get the brace taken off and on while you were away from [77] home?

A. My sister did it.

Q. And she had to go with you every place you went?

A. Yes, she did.

Q. And you say that lasted clear up until when?

A. Up until about the middle of the year 1947.

Q. That is almost a year after the accident?

A. Yes, it was.

Q. What was your salary at the bank before the accident happened?

A. It was two hundred and seventy—

Mr. McKnight: Oh, we were going to do this at the lunch period—

Mr. Deutz: I would like to hear the answer to that question.

The Court: What is that?

Mr. Deutz: I would like to hear the answer to that question, if I may, your Honor.

The Court: All right.

Q. By Mr. McKnight: What was your salary at the bank? A. \$275.00 a month.

Q. And in the common course of working for a bank like that—

The Court: Like that? For that bank.

Q. By Mr. McKnight (continuing): —For that bank, yes, your Honor. —what was their usual custom in reference [78] to raising salary; I mean, did you have a raise coming annually?

(Testimony of Ernest John Uarte)

The Court: An automatic raise?

Q. By Mr. McKnight (continuing): Automatic or not.

A. Yes; we have one of them once a year.

The Court: All right.

Q. By Mr. McKnight: And what was that automatic raise?

A. That all depends. I would have received around twenty-five or thirty dollars a month.

Q. More, if you had gotten that raise?

A. Yes, I would.

Q. Was or was not that raise prevented by this accident?

A. It was prevented.

Q. When you got back to work, did you go back at an increased salary, or at your old salary?

A. At the old salary.

Q. And you have been working at that salary ever since, or have you had a raise since that one?

A. I had a raise this last January.

Q. That would have been normally the second one?

A. Yes.

Q. And that raise was how much?

A. That was only \$15.00. [79]

Q. After you get to a certain amount, the raise gets smaller, is that right?

A. The reason I didn't get a larger raise is because I was having difficulty in doing my work.

Q. What kind of difficulty?

A. Well, when I went back, I couldn't remember a thing about my work. I had to learn it all over again.

(Testimony of Ernest John Uarte)

Q. Yes. Will you just describe that a little more fully?

A. When I went back to work, I didn't remember anything about my work, I didn't even know what I was doing when I left on my vacation; therefore, the fellow that relieved me had to teach me the work all over again, had to teach me the job because I couldn't do it, and it took quite some time for me to get onto the work; therefore, they didn't feel that I was entitled to a full raise.

Mr. McKnight: I think that is all at this time, your Honor.

The Court: I think we will recess until 1:30.

Mr. McKnight: Your Honor, Mr. Deutz has asked for a medical examination by a physician of his choice and I have agreed to get Mr. Uarte there.

The Court: This noon?

Mr. McKnight: Yes.

The Court: We will recess until 2:00 o'clock then. [80]

Mr. McKnight: Until 2:00 o'clock.

The Court: And do you have witnesses that you wish to take out of order?

Mr. McKnight: I will have at 2:00 o'clock, your Honor.

The Court: Before the cross examination of this witness?

Mr. McKnight: I will have one witness that I wish to take out of order, for this reason, your Honor, if he is here, he is under subpoena. I talked to him on the telephone and he said—

The Court: What I would like to do this afternoon is to be sure to dispose of all the witnesses who are from out of town.

Mr. McKnight: Yes.

The Court: So we won't inconvenience them.

Mr. McKnight: This witness I have in mind, his boy is being shipped back from France and was to arrive today. He is one of the soldiers that fell there, and the witness has refused to honor the subpoena and come in, and I have talked with him and I finally got his promise to be here, and I promised to put him on, then, right off. Now, I don't know whether he will be here or not.

The Court: If he is here, I will see that he is put on right away.

Mr. McKnight: Thank you. [81]

(Thereupon, a recess was taken until 2:00 o'clock p.m. of the same day, Tuesday, May 25, 1948.) [82]

---

Fresno, California, Tuesday, May 25, 1948. 2 P. M.  
(Trial resumed.)

The Court: You may proceed.

Mr. McKnight: Your Honor, pursuant to the statement I made at the end of the morning session, I would like to call somewhat out of order at this time, if I may, the witness Allen Thomas Roberts.

The Court: Very well. Mr. Roberts, will you come forward, please, and be sworn?

ALLEN THOMAS ROBERTS,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Allen Thomas Roberts.

The Clerk: What is your address?

The Witness: Route 2, Box 186, Madera.

The Court: Is that spelled A-l-l-a-n?

The Witness: A-l-l-e-n.

Direct Examination

By Mr. McKnight:

Q. What is your business or occupation, Mr. Roberts? [83]           A. Farming.

Q. How long have you lived and followed that occupation in Madera County?

A. 24 years next September.

Q. Do you know Mr. Uarte?           A. No, I do not.

Q. Did you ever meet him in your life?

A. I never did. Well, I did in the trial at Madera, is the first time I ever seen him.

Q. Did you happen to come upon the scene of this accident some time after it happened?           A. I did.

Q. And that was approximately somewhere shortly after 11:30 on July 24, 1946?

A. That is right.

Q. Where had you been, Mr. Roberts?

A. On a fishing trip.

Q. And where were you going?

A. Coming home.

(Testimony of Allen Thomas Roberts)

Q. Who was with you?

A. My son and Mr. Kell, Tom Kell.

Q. And as you were driving along, say, from Chowchilla to the place where this accident happened, what were the passengers in your automobile doing?

A. They were asleep. [84]

Q. When you came to the scene of the accident, did you see any vehicles there?

A. Oh, yes, yes.

Q. What vehicles did you notice?

A. Well, I recognized the station wagon and there was quite a few trucks and cars, and if I remember right, there were a couple of stages or buses, whatever you want to call it, several of them.

Q. Did you stop at the scene of the accident?

A. I did not.

Q. What did you do?

A. Well, as I came up there, they were just putting out the flares on the north side and I seen a man walking away, I didn't know who it was, and I slowed down. I seen there was trouble or presumed there was, and that woke Mr. Kell up. He asked me what was the trouble. I said there was a bad accident in front, I think. I said, "Shall we stop?"

He said, "I don't care about it. I don't care about the kids seeing it."

So we pulled to the right, that would be to the west of the highway, in low gear, just eased on by.

The Court: On the dirt?

The Witness: Yes.

The Court: By the trees? [85]

The Witness: Yes—Well, I don't remember whether there were any trees at this particular place or not, but

(Testimony of Allen Thomas Roberts)

anyway, we were on the west side of the highway. I recognized the station wagon there. If I remember right, the motor, the station wagon was headed east across the highway. So we came around very slow. There was a man got up to the side of the car and asked us if he could ride to the phone. I told him he could and I never asked him his name. I asked him, "What is the trouble?"

He said the Navy boys are killed and he said, "There is another boy we think is going to die. We want an ambulance."

I did not ask him who it was, and he didn't even know, and I did not even stop.

Q. By Mr. McKnight: I show you Plaintiff's Exhibit 12, which purports to be a view of that highway in that vicinity where the accident happened, looking south.

A. Yes.

Q. You see there are some trees over there?

A. Yes.

Q. On which side of those trees did you go?

A. Well, I estimate the car went on the west side of the trees. I was clear off on the dirt, in fact of the matter, I was on the edge of the grain field.

Q. You stated a moment ago you recognized this station wagon. Had you seen it before that night? [86]

A. It passed me about a mile and a half or so south of Chowchilla.

Q. How far is that from the place where the accident happened?

A. I should judge it is 10 or 11 miles.

Q. You are quite familiar with that vicinity there, are you? A. Yes, oh, yes.



(Testimony of Allen Thomas Roberts)

Q. And at the time the station wagon passed you, how fast were you traveling?

Mr. Deutz: I object, your Honor. That matter is immaterial, irrelevant and entirely remote. That happened 10 or 12 miles from the accident, and unless the plaintiff can establish that this witness had that vehicle in view up to the point of the accident and can testify to the speed of the vehicle at the time or immediately prior to the happening of that accident, it is too remote. I have these authorities on that point.

The Court: The objection is overruled.

Mr. Deutz: Would your Honor care to hear the authorities that I have on that point?

The Court: I am familiar with them. Objection overruled.

Q. By Mr. McKnight: Approximately how fast were you driving at the time that this Navy station wagon passed [87] you, Mr. Roberts?

A. About 40 miles an hour.

Q. And will you state to the Court in your best judgment how fast the Navy Station wagon was driving at the time it passed you?

A. I judge it was driving anywhere from 70 to 80 miles an hour. I presume it was wide open, the way it was traveling.

The Court: Was it raining?

The Witness: Misting raining.

Q. By Mr. McKnight: Was the highway wet?

A. It was pretty slippery.

Q. And as the station wagon passed you, did it pass on the left side of the road?

A. That is right. It passed to my left.

(Testimony of Allen Thomas Roberts)

Q. And then crossed back to the right side of the road? A. Yes.

Q. Will you describe what happened when it tried to get back on the right side of the road?

A. The station wagon, when it passed me, instead of the back end trailing around, it just slid around, whipped around, the back wheels just skidded around. They didn't trail around, and just skidded around.

Q. And then did it disappear down ahead of you?

A. It went right on out of sight. [88]

Q. And did you ever see it again until the scene of the accident?

A. That is right: I didn't see it until I got to the accident.

Q. Then, continue. Continue on.

The Court: How far north, did you say, of the accident this was?

The Witness: About 10 or 12 miles.

The Court: How long was it before you got to the scene of the accident?

The Witness: I should judge about 12 minutes.

Q. By Mr. McKnight: Did you continue at that speed? A. No, I didn't.

Q. Did you continue along at the same rate of speed, about 40 miles an hour?

A. I continued at the same speed.

Q. When you arrived at the scene of this accident, did you say there were already a considerable number of cars and vehicles there? A. There was.

The Court: Excuse me. How long have you been driving an automobile?

(Testimony of Allen Thomas Roberts)

The Witness: I have been driving ever since about 1919.

The Court: Almost continuously?

The Witness: Yes, sir. [89]

The Court: This car you were driving, what kind was it?

The Witness: It was a station wagon.

The Court: The make?

The Witness: A Ford.

The Court: How long had you had it?

The Witness: It wasn't mine. It belonged to this man, Mr. Kell.

The Court: You had driven that type of car before?

The Witness: That is right.

The Court: During your period of experience in driving, you have had occasion to observe the speedometer from time to time?

The Witness: Yes.

The Court: In the car you were riding in?

The Witness: Yes.

The Court: And notice the vibration of an automobile?

The Witness: That is right.

The Court: At that time, you weren't looking at your speedometer, were you?

The Witness: Well, no.

The Court: That is, when they passed?

The Witness: No. I just looked at it after they passed and I just think—

The Court: You looked at it after they passed?

(Testimony of Allen Thomas Roberts)

The Witness: Yes, and I think, my goodness, boys, you [90] are going to crack up. That is the remark I made to myself.

The Court: Well, that can go from the record. It may be stricken.

The Witness: Yes.

The Court: I understand. And during that period since 1919, that is almost 30 years, isn't it?

The Witness: Yes.

The Court (continuing): You have had occasion to drive cars in California?

The Witness: Yes.

The Court: And on that road?

The Witness: Yes. I am very familiar with the road north and south on that route.

The Court: And different types of vehicles?

The Witness: Yes.

The Court: All right.

Q. By Mr. McKnight: Were there any crossroads or anything between the point where you saw this station wagon pass you and the scene of the accident that would have—

A. Yes, there were intersections and everything. However, there was nothing to cause me to slow down.

The Court: There weren't any boulevard stops?

The Witness: Well, I presume there was on the road some places, yes. [91]

The Court: That is, entering the highway?

The Witness: Entering the highway.

The Court: Not on the highway?

(Testimony of Allen Thomas Roberts)

The Witness: No boulevard stops on the highway, no.

Q. By Mr. McKnight: So you kept the general rate of 40 miles an hour right to the scene of the accident?

A. That is right.

Q. You say when you had arrived at the scene of the accident, there had been time enough elapse for a number of vehicles to already get to a stop?

A. Yes; there were quite a few stopped there, then.

Q. Can you estimate, to the best of your ability, how many vehicles were there by the time you arrived there?

A. I should judge there were 20 or 25 different vehicles there, trucks and cars there; there was quite a bunch of them.

The Court: Headed south?

The Witness: They were headed in all directions.

The Court: About how many were headed in the direction you were going?

The Witness: That I couldn't say definitely. I didn't even take time to count them, but there were quite a few, several of them had stopped.

The Court: Well, you would know if you saw 50 automobiles? [92]

The Witness: Yes.

The Court: Or if there were more than ten?

The Witness: There wasn't 50 there.

The Court: About what is your best recollection?

The Witness: Well, I judge, the best I remember, there must have been 8 or 10 headed south.

The Court: Headed south?

The Witness: Yes.

The Court: Very well.

Q. By Mr. McKnight: And did you say that flares had been put out? A. They had.

(Testimony of Allen Thomas Roberts)

Q. Had the putting out of flares—Were they already out?  
A. Yes.

Q. Had the putting out been completed?

A. That is how come me to slow down. This man evidently, from the way it happened, he just put the last one out north of the accident and was walking back and I slowed down, I cut my speed down then.

Q. Do you remember any other vehicle passing you from the time that this vehicle passed you to the scene of the accident?

A. Well, I don't recall. It seemed to me like there was one passed over there right close to Veranda. [93]

Q. Do you have any definite memory of that?

A. No, I don't.

Q. Now, all the way from this place where the station wagon passed you to the place of the accident, did it continue to be wet and slippery?

A. It was still raining.

Q. Still raining all the way. As the station wagon passed you, did you see anything written on the sides of it?

A. I seen something, "Navy Recruiting," or something like that. I don't remember. I just call it a Navy station wagon.

Q. Did you recognize it as a Navy wagon?

A. Yes.

Q. As it passed you?  
A. Yes.

Q. And you recognized it as the same one when you got there?  
A. Yes, sir.

Mr. McKnight: That is all.

The Court: Cross examine.

(Testimony of Allen Thomas Roberts)

Cross-Examination

By Mr. Deutz:

Q. Mr. Roberts, I believe you stated that when this Navy station wagon passed you, it was about 10 or 11 miles [94] north of the scene of the accident, is that correct?

A. That is right; that is right.

Q. After that station wagon passed you, how long did you have it in view?

A. Well, I didn't have it in view very long. It was dark and cloudy, of course, raining. I would say probably, with my lights, maybe a quarter of a mile, you know; I could see a faint—

Q. And then it disappeared from your view?

A. That is right.

Q. When that station wagon passed you, did you notice what its color was?

A. Yes. If I remember right, it was a blue, kind of a—it was a two-toned color, kind of, I think, if I remember right.

Q. Two-tone in what way, the fenders darker than the body? A. Something like that, yes.

Q. Or vice versa?

A. I wouldn't say definitely just exactly what that was.

Q. Were there two tones of blue?

A. No. There weren't two tones of blue, I don't think.

Q. You don't know definitely what the color was?

A. No. The only reason I come to identify the wagon [95] was the lettering on the side.

Q. What lettering did you see on the side?



(Testimony of Allen Thomas Roberts)

A. Something like "Navy Recruiting"; something like that.

Q. "Navy Recruiting"? A. Yes.

Q. Those words? A. Yes.

Q. Did you notice a license number? A. No.

Q. Did you notice any number on the side of the vehicle at all?

A. I didn't pay any attention to that. I don't recall any.

Q. Did you get a glimpse of the men riding in the vehicle at all?

A. I seen the men, yes, when they passed, I noticed the men, I noticed they were Navy men.

Q. How many men were in that vehicle?

A. Just two.

Q. Just two. And they were both in the front seat? A. Yes.

Q. Did you ever have occasion to identify those individuals— A. No. [96]

Q. —so that you could see them later? A. No.

Q. What I meant to say was—I misstated the question—At the time of the accident, you didn't leave your car, you didn't see the bodies?

A. No. I seen the bodies—Well, I seen the covering that was on the bodies in the street.

Q. Then, you couldn't positively state that the men that were lying on the ground were the men you had previously seen in the station wagon?

A. No, I could not positively state.

Q. Could you positively state that the station wagon you saw at the accident was the identical station wagon that you saw passing you?

A. Yes, I could.

(Testimony of Allen Thomas Roberts)

Q. On what basis?

A. Well, from the color—

The Court: It is argumentative; it is argumentative.

Q. By Mr. Deutz: You travel that highway a great deal, don't you? A. Yes.

Q. Along back in July, 1946, were there a considerable number of Army and Navy station wagons on the highway? A. Sure.

Q. There were considerable Navy and Army installations [97] in this area? A. Yes.

Q. And during the course of the evening, do you recall passing any other Navy station wagon?

A. There wasn't any other Army or Navy station wagon passed me that afternoon or that evening.

Q. But do you usually encounter a number of them on the road? A. I didn't that evening.

Q. As a rule, did you encounter them in your driving?

A. Yes, as a rule, I did.

Q. After this vehicle passed you 10 or 11 miles from the scene of the accident and disappeared from your sight about a quarter of a mile beyond, you had no further view of that vehicle— A. That is right.

Q. —thereafter? A. That is right.

Q. You have no way of stating, or you are unable to state, what the speed of that vehicle was at any time closer to the scene of the accident than what you have just given? A. No, sir.

Mr. Deutz: That is all.

Mr. McKnight: That is all. Your Honor, may Mr. Roberts be excused? I explained to your Honor the situation [98] that he is in. I would appreciate it if he may go back to his family.

(Testimony of Allen Thomas Roberts)

The Court: Well, I am wondering whether or not, for the purpose of this record, there ought to be a question asked of this witness concerning that, if counsel cares to ask it. I don't know. I think it would probably be permissible, on the grounds it goes to show either bias or prejudice or lack of it.

Redirect Examination

By Mr. McKnight:

Q. Mr. Roberts, it is my understanding that your son's body arrived from overseas yesterday?

A. That is right.

Q. He was killed months ago during the war, is that right?

A. In '44.

Q. And I assume that your family is quite grieved?

A. Yes. My wife is very upset over it.

Q. And you have requested me to put you on out of turn?

A. That is right.

Q. And get you away just as soon as we can, so you can get back to your family?

A. That is right.

The Court: Have you ever had any experience or [99] arguments with the Navy?

The Witness: No, sir.

The Court: Very well.

Q. By Mr. McKnight: What branch of the service was your son in

A. He was in the Infantry.

The Court: All right. You may be excused.

Mr. McKnight: Thank you, Mr. Roberts.

The Witness: Thank you very much.

The Court: The next witness.

Mr. McKnight: I will call Mr. Daniels.

W. R. DANIELS,

called as a witness by and on behalf of the Plaintiff,  
having been first duly sworn, was examined and testified  
as follows:

The Clerk: Your full name, please?

The Witness: W. R. Daniels.

Direct Examination

By Mr. McKnight:

Q. And your address? A. Oakland.

The Court: And your street address?

The Witness: 608 Catron Drive. [100]

The Court: Catron Drive, Oakland 3?

The Witness: Oakland 3.

Q. By Mr. McKnight: What is your business or  
occupation? A. A truck driver.

Q. And by whom are you employed?

A. Golden State Company.

Q. By whom were you employed on July 24, 1946?

A. That same company.

Q. What were you doing on the night of July 24,  
1946?

A. I was proceeding towards Los Angeles.

Q. Driving? A. Driving, yes.

Q. And what kind of equipment were you driving?

A. The same kind of truck and trailer arrangement  
that was—

Mr. McKnight: Speak up.

The Court: I can't hear you, Mr. Daniels.

The Witness: I am sorry. Well, the same kind of  
equipment that Mr. McCoy had.

Q. By Mr. McKnight: You were both employed by  
the same employer? A. Oh, yes.

(Testimony of W. R. Daniels)

Q. And you were proceeding south and he was proceeding north? [101]                      A. Yes.

Q. Did you come upon the scene of this accident on that evening sometime in the vicinity of 11:30 p. m.?

A. That is right; I did.

Q. When you arrived at the scene of the accident, what vehicles did you see?

A. Well, there were quite a few.

The Court: About what time did you get there, did you notice?

The Witness: It was around in the neighborhood of 11:30, 11:40.

The Court: 11:30, between then and midnight?

The Witness: Yes.

Q. By Mr. McKnight: What vehicles did you see there, and I am speaking now of vehicles that appeared to have been involved in the accident?

A. Well, the first thing that I saw was this Golden State semi and trailer that was across the road, and then this station wagon that was all cracked up was this side of the semi.

Q. By "this side," do you mean north?

A. Toward me, next to me, yes.

Q. From the way you were coming?                      A. Yes.

Q. Did you see the Ford sedan? [102]

A. Not right then, no.

Q. But you did while you were there?                      A. Yes.

Q. Now, Mr. Daniels, had you seen that Navy station wagon at any time before you arrived there at the place where the accident happened?

A. Just a few minutes before that.

(Testimony of W. R. Daniels)

Q. Will you state to the Court where you were when you saw the Navy station wagon the first time?

A. Well, just after passing Veranda Junction, just a few miles north of there, about, I believe it was, four or five miles.

Q. Four or five miles north of what?

A. North of the scene of the accident.

Q. And were you at that time driving your equipment?

A. Yes.

Q. In what direction? A. I was coming south.

Q. And what was the condition of the weather at that time?

A. Well, it was nasty, it was sloppy, raining.

Q. Was the highway wet or dry?

A. Very treacherous.

Q. Was it wet or dry? A. Wet. [103]

Q. Wet. Was it slippery? A. Very.

Q. And where was the Navy station wagon when you first saw it?

A. Well, it overtook me. When I actually saw the Navy station wagon was when it passed me.

Q. How long have you driven vehicles, Mr. Daniels?

A. Well, over 25 years.

Q. How long has that been your business, truck driving? A. All of that time.

Q. All of that time. And has all of that time been upon the highways of this state or not?

A. No; in numerous states.

Q. But during that time you have continuously driven upon the highways? A. Yes, that is right.

Q. Have you learned, do you believe, to make a fair estimation of speed of vehicles that pass you?

A. I beileve so.

(Testimony of W. R. Daniels)

Q. Will you tell the Court approximately how fast you were driving when the Navy station wagon passed you?

A. We were running in the neighborhood of 35 or 40 miles an hour; the current flow of traffic for the past hour or so previous to that time had been from 35 to 45 miles an hour. [104]

The Court: And they slowed down because of the treacherous road?

The Witness: Yes.

Q. By Mr. McKnight: And that was your speed, approximately, at that time?

A. My speed at that time was approximately—I had just passed Veranda Junction and had slowed down and was picking up a little bit, and we were between 35 and 40 miles an hour, I think.

Q. All right. Will you tell the Court the nature of the road at the place where the station wagon passed you, that is, was it a straight road there or not?

A. There is a slight turn just this side of Veranda Junction and there is a double line approaching a little rise.

Q. Is that what you describe as an "S" turn?

A. A mild "S" turn there.

Q. And what kind of a line divided the two pavements where the station wagon passed you?

Mr. Deutz: I object.

The Court: Objection overruled.

A. There is a double line on the last part of this "S" turn approaching this little rise.

The Court: The double line—One of them was a solid line?



(Testimony of W. R. Daniels)

The Witness: Well, it is a solid line up to the last [105] part of this "S" turn, and then there is a double line from there over the rise.

Q. By Mr. McKnight: You mean both lines are solid; you mean one was not broken? A. No.

Q. They were both solid lines? A. Yes.

Q. And did the double line exist at the exact point where the station wagon passed you?

A. Yes, it did.

Q. In order to pass you, did the station wagon go onto the left side of the highway and cross the double line?

A. Yes, he went against—

Mr. McKnight: Speak up.

The Witness: He went against oncoming traffic.

Q. By Mr. McKnight: The question was, Did he pass over the double line on the left side of the highway?

A. Yes, he did, clear over the double line.

Q. From your experience and knowledge of your own experience and all other factors which you took into consideration, will you estimate to this Court to the best of your ability the speed of the station wagon as it passed you?

Mr. Deutz: I object to that question.

The Court: Your exception is preserved.

Mr. Deutz: Very well, your Honor. [106]

The Court: And the objection is overruled.

A. The approximate speed I judge was between 70 and 80 miles an hour. It was terrific.

The Court: In other words, he was going almost twice as fast as you were in passing you?

(Testimony of W. R. Daniels)

The Witness: Oh, it was "zip" and gone, and he pinched in between me and a rig ahead of me.

The Court: There was a car ahead?

The Witness: There was a rig.

The Court: A truck? You mean a truck?

The Witness: Yes, and then he slowed down.

The Court: How far ahead of you was the other truck?

The Witness: Well, less than a hundred yards.

Q. By Mr. McKnight: And you say as he came in between you, he slowed down some?

A. He slowed down some.

Q. Then, what did he do?

A. Then he let one more pass.

Q. In which direction was the other truck going, or the other car?

A. There was a car going north.

Q. A car going north?

A. And he let that car by, and as soon as he passed, he swung out onto the other lane again and passed this rig at the crest of the rise. [107]

The Court: Was there still a double line at the crest?

The Witness: Yes.

The Court: In other words, you saw him make two passes over the double line?

The Witness: That is right.

Q. By Mr. McKnight: And what happened? Could you see anything happen with reference to his rear wheels as he—

Mr. Deutz: Just a moment. I object to that as a leading question, your Honor.

(Testimony of W. R. Daniels)

Mr. McKnight: Well, I will withdraw it and put it a different way.

The Court: Well, it is leading, but the objection is overruled.

Q. By Mr. McKnight: What did you see in reference to the station wagon as he took up speed?

A. He used so much throttle, he spun his wheels and there was a spray, it was like steam, spinning his wheels.

Q. Did you continue on to the place of the accident at an average speed that you have already designate?

A. The current flow of the—

Q. I am speaking about you, now.

A. Well, I stayed behind this rig that was ahead of me.

Q. Did you continue on—

A. We maintained about the same speed all the way [108] from there to the accident.

Q. And when you arrived at the scene of the accident, had it already happened?

A. Oh, yes, it had already happened.

Q. Were there other vehicles already stopped there?

A. There were some, yes.

Q. Or not? A. There were some.

Q. You don't know just how long before it happened?

A. I could not say.

The Court: Counsel, is there some law about this double line?

Mr. McKnight: No. Your Honor, it is the law that a vehicle upon the state highway—

The Court: Is that in the Motor Vehicle Code?

Mr. McKnight: No. The Motor Vehicle Code gives the Department the right to make such a regulation.

(Testimony of W. R. Daniels)

The Court: And they have a regulation that there shall be a double line and there shall be no passing over the double line?

Mr. McKnight: That there should be no passing over the double line.

Mr. Deutz: I want to point out, if your Honor please, that this is so remote. Any passing over a double line at such a distance could not possibly have anything to do with [109] what happened at the scene of the accident.

Mr. McKnight: It is only for the purposes of showing the circumstances leading up to the accident.

The Court: Objection overruled.

Q. By Mr. McKnight: When you arrived at the scene of the accident, what did you do first?

A. I first went to Don McCoy, the driver of the Golden State rig that was involved in the accident and asked him if he was—

Q. Don't give the conversation you had at that time. You talked to him, is that it?

A. My first concern was to see he was all right.

Q. And you determined that? A. Yes.

Q. Then, what did you do after you determined that Mr. McCoy and, I assume, his wife were all right?

A. Well, set out flare pots.

Q. And from the time that you arrived at the scene of the accident until you got all these flare pots out, how many minutes, if any minutes, would you say elapsed?

A. Well, I don't believe that I had been there more than 10 or 15 minutes.

Q. Do you think it took you that?

A. I don't think it took more than about 10 minutes from the time I arrived at the scene of the accident until I [110] set the flare pots out.

(Testimony of W. R. Daniels)

The Court: Until you completed setting them out?

The Witness: I believe so.

The Court: The police had not then arrived, when you set out the pots?

The Witness: I believe there was a Highway Patrol arrived right about that time; I am not sure. It has been quite a while ago.

The Court: Very well.

Mr. McKnight: I think that is all.

### Cross-Examination

By Mr. Deutz:

Q. You were about four or five miles north of the scene of the accident at the time the Navy station wagon passed you, is that correct? A. That is right.

Q. And you were proceeding about 35 to 40 miles an hour? A. That is right.

Q. Did you state that you had slowed down to approximately that speed, due to the wet slippery weather?

A. Not immediately—but quite a while before, the traffic had all slowed down.

Q. What type of equipment were you driving? [111]

A. I was driving a Peterbilt tractor with a semi-trailer.

Q. A semi and a trailer?

A. No. It is a tractor and a semi-trailer.

The Court: In other words, you just had the truck part of it; you didn't have the second part back of it?

The Witness: I did not have a trailer. I did not have a four-wheel trailer.

Q. By Mr. Deutz: What was the weight of that vehicle, approximately?

(Testimony of W. R. Daniels)

A. Well, approximately, I had 30,000—between twenty-five and thirty thousand. Tare weight, we would run perhaps 35,000 to a load.

Q. Do you know that there is a maximum regulation for speed of vehicles of that kind?

Mr. McKnight: We object to that, your Honor, as incompetent, irrelevant and immaterial, and not within any issue in the case, the Golden State Company not being a party defendant at the present time, your Honor.

The Court: Well, it is like proving an alibi in a criminal case and always trying to prove that somebody else did it. I think it is admissible.

Mr. McKnight: Of course, this wasn't the vehicle involved in the accident.

The Court: He didn't ask him— [112]

Mr. McKnight: Very well. May I add to the objection?

The Court: Well, I think it is immaterial so far as this witness is concerned.

Mr. McKnight: And also, it would be a legal conclusion of the witness, your Honor.

The Court: Yes, it would, so far as this witness is concerned.

Q. By Mr. Deutz: This station wagon that passed you, did you identify it as to color?

A. Well, they all look pretty much the same to me.

Q. What color was it?

A. I believe it was a conventional Navy blue-grey like, with this veneer, this varnished veneer like most of these station wagons are.

Q. Single color or two-tone?

A. It would be two different colors.

(Testimony of W. R. Daniels)

Q. Two different colors of paint, two different colors of the blue? A. I wouldn't say about the blue.

Q. Of course, there is a natural wood finish body on it? A. Yes.

Q. But outside of that, was it just one color or two?

A. I wouldn't say.

Q. How do you identify it as the Navy Vehicle? [113]

A. Because I saw "U. S. Navy" on the side and a number.

Q. Do you recall the number?

A. No. Then, as it got past me and in front of me, then I saw the "U. S. Navy" on the back and a number on that.

Q. Did you see anything that indicated that it was the Recruiting Service?

A. I couldn't be positive, because it was of no concern to me at that time.

Q. Did you get a look at the men in the vehicle?

A. No, certainly not. I merely saw that there was more than one in it. I couldn't say whether there were three or four, or how many.

Q. When the Navy station wagon passed you, you say you saw a spray of water fly up, as it cut in front of you?

A. Not as he passed me. As he cut in front of me and as he passed the rig ahead of me.

The Court: As he turned to pass the rig ahead of you?

The Witness: Yes; he used so much throttle, he actually spun his wheels.



(Testimony of W. R. Daniels)

Q. By Mr. Deutz: Did he do that quickly?

A. My goodness sakes, yes. He didn't pull out steadily. He zipped around.

Q. In your experience of long years of driving, have [114] you had occasion to have wheels spin on you on a wet, greasy road? A. Certainly I have.

Q. Do you find that a usual occurrence?

A. We take precautions not to let it happen.

Q. And it happens to you?

A. Not if you use care.

Q. Have you had it happen to you with the type of vehicles which you were riding in?

A. I don't recall. Perhaps it has.

The Court: What usually causes that?

The Witness: Too much throttle.

The Court: Too much power?

The Witness: Yes.

The Court: The sudden application of too much power?

The Witness: That is right.

Mr. Deutz: That is all.

Mr. McKnight: That is all.

The Court: The witness may be excused?

Mr. McKnight: Yes, your Honor, so far as I am concerned.

Mr. Deutz: Oh, I just want to ask one more question. You don't need to return to the witness stand.

(Testimony of W. R. Daniels)

The Court: All right.

Q. By Mr. Deutz: How long after the station wagon [115] passed you did it disappear from your view?

A. Well, he was out of sight as soon as he got in front of the rig ahead of me.

Q. And you never say the station wagon at any other time from that point to the scene of the accident?

A. No, sir.

Mr. Deutz: That is all.

The Court: About how long in lapsed time was it from the time until you got to the scene of the accident, do you recall?

The Witness: Approximately five or six minutes, I believe.

The Court: Very well. Call the next witness.

Mr. McKnight: Mr. McCoy. This witness is the witness I desire to call under Rule 43(b).

The Court: Well, he hasn't given any demonstration of hostility yet. I don't know. He may not.

Mr. McKnight: I don't think he will, your Honor. I found one case that held that you had to announce that before the harm is done, and therefore that is the reason I was doing it.

The Court: Very well. [116]

DON A. McCOY,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Don A. McCoy.

The Clerk: Your address?

The Witness: 10942 Apricot Street, Oakland 3, California.

Mr. Deutz: Your Honor, I don't object to the reference to Section 43(b), but, he is calling him as his own witness and is bound by his testimony unless there is some showing of adversity.

The Court: Well, let me see the rule. The bailiff or somebody will get me a copy of it. Will you see if you can get me the Rules of Civil Procedure?

Mr. McKnight: Your Honor, may I, while the rule is coming in, state for the record the basis of my calling the witness under that Section? I covered it at least partially.

The Court: Well, I understand it, but you better state it for the record.

Mr. McKnight: That is what I had in mind.

This witness, if your Honor please, was originally a defendant in this suit. He has now been dismissed, and is not an adverse party in this suit. However, he is an adverse [117] party, to wit, a co-defendant in another action which has been filed in the Superior Court, which has been tried once, and which, in all probability, will be tried again—

The Court: In what Superior Court?

Mr. McKnight: Of Madera County.

(Testimony of Don A. McCoy)

The Court: Of Madera County.

Mr. McKnight: —having resulted in a non-suit as to one defendant and a hung jury as to the other defendant. He was represented by his own counsel.

I have not had full opportunity to discuss his testimony with him. True, I did see him this morning and talk to him for about a minute or two. Under those circumstances, I feel that his interests are different than ours and I would like the privilege of examining him under that Section, although Mr. McCoy has always been a gentleman and has showed no great impartiality to anyone so far in the case.

Mr. Deutz: I would like to point out, your Honor, that in so far as Mr. McCoy's testimony is concerned, it has been clearly covered at the previous trial, so counsel for the plaintiff is not completely unaware of the testimony to be given in this case.

Mr. McKnight: Not if it is the same, your Honor.

The Court: I think under the rule it is permissible. It states a party may interrogate and unwilling or hostile witness by leading questions. There isn't any evidence of [118] any hostility on the part of this witness on this trial here. There isn't any controversion of the statement that he is yet a party to an action now pending against him arising out of the same incident which causes this action. The record shows that he was originally a party to this action, and the rule also permits the calling of an adverse party.

I think from the fact that he is a party to the action pending in the State Court, that the Court would be justified in indulging the presumption that he would be an

(Testimony of Don A. McCoy)

unwilling witness, because unwillingness arises from a great many things, and it is natural that a person should be unwilling to take the witness stand and confess any error or commit any error on their part.

I think, moreover, that he can be cross examined under Rule 43 by virtue of the fact that he was a party to this action.

While it is true that a motion to dismiss was partially granted as to all defendants except the United States, and as to this defendant an order was made doing so, and while it is true that that is the law of this case, as far as this Court is concerned, because the ruling was made by another judge of this court, in this case, nevertheless, it is not beyond the realm of possibility that some higher court, by the time they get through with it, may put him back in as a party, and, in the meantime, the plaintiff in this case should [119] not be deprived of a right which is given to him under the rule, and for that reason the motion is granted and the objections to it are overruled.

You may proceed under Rule 43(b).

Direct Examination

By Mr. McKnight:

Q. Mr. McCoy, what is your business or occupation?

A. Truck driver.

Q. By whom are you employed?

A. Golden State Company, Ltd.

Q. By whom were you employed on July 24, 1946?

A. Golden State Company, Ltd.

Q. Was a vehicle driven by you involved in this accident that we are discussing here in this case?

A. Yes, sir.

(Testimony of Don A. McCoy)

Q. What kind of a vehicle was that?

A. That is a Peterbilt tractor with a double axle semi pulling a four-wheel trailer.

Q. And in what direction were you driving before the accident occurred? A. North.

Q. On Highway 99?

A. On Highway 99, yes, sir.

Q. About two and a half miles north of Madera? [120]

A. That is right, yes, sir.

Q. As you proceeded northerly and before the accident happened, but in the immediate vicinity of the accident, was it raining? A. It had been, yes, sir.

Q. Do you remember whether it was at the exact moment of the accident or not? A. No, sir.

Q. You mean you don't remember, or that it wasn't?

A. I don't remember.

Q. You don't remember. At that time and place, was the highway wet? A. Yes.

Q. Was it slippery? A. Yes.

Q. At approximately what speed were you driving as you drove northerly? A. 40 miles an hour.

Q. And on which side of the white line were you driving?

A. The east side of the white line going north.

Q. That would be your right-hand side of the line?

A. The right-hand side of the highway.

Q. At that point was it a single white line or a double white line? [121]

A. A single white line.

Q. And approximately how far from the white line would you say the left side of your vehicle was being driven? A. I would say approximately two feet.

(Testimony of Don A. McCoy)

Q. Now, did you see either of the other vehicles involved in the accident at any time before the accident actually occurred?

A. No, I couldn't say that I saw the vehicles. I saw the lights of them.

The Court: Coming toward you?

The Witness: Toward me, yes, sir.

Q. By Mr. McKnight: And when you first saw those lights—I am referring now to the first time you noticed or saw them or recall seeing them—did you see one set of lights or two?

A. I saw one set and then I saw the other set following after. There is a slight raise in the road, a crest, approximately 750 feet, or around 250 yards, from the scene of the accident, and as they came both over the top, I saw both of them.

Q. You saw both sets of lights? A. Yes.

Q. Now, at that time, without attempting to state a distance in feet, can you state definitely whether there was actually a distance— [122]

The Court: Let me see the pictures.

Q. By Mr. McKnight (continuing): —between those two vehicles, between the two sets of lights?

A. Yes.

Q. There was. Could you state to the Court how far one of those sets of lights was behind the other, or do you have any idea of that?

A. You mean when I first saw them?

Q. When you first saw them? A. No, sir.

Q. You couldn't give any distance? A. No, sir.

Q. You just know that there was definitely a distance between them? A. Yes, sir.



(Testimony of Don A. McCoy)

Q. Can you give any estimate of the speed of those vehicles, at that time? A. No, sir.

Q. All right. As these vehicles continued toward you and as you continued toward them, as you came together, did both sets of lights remain in your view, or did one of them disappear from view?

A. I didn't follow you.

Mr. McKnight: Read the question.

The Court: Well, what he is trying to get at is, did [123] one vehicle start around the other?

The Witness: No, sir.

The Court: Go around?

The Witness: No, sir.

The Court: Or did one vehicle get so close behind the other one that you couldn't see it?

The Witness: The vehicles came close and then one pair of headlights was blacked out.

The Court: I see.

Mr. McKnight: All right. That is the answer. That is what I wanted to get, your Honor.

Q. And did you at any time prior to the actual collision see both sets of lights again?

A. No; no, I wouldn't say that I did; no, sir.

Q. As the two vehicles continued to go, to go forward, your attention, I assume, was focused upon the first set of lights? A. Yes, sir.

Q. Did you afterward determine which vehicle that was, the first set of lights?

A. You mean after the accident?

Q. Yes.

A. Well, by presuming which car hit me first, I presumed that that was the first car; that is what my assumption was. [124]

(Testimony of Don A. McCoy)

Q. That was which car?

A. That was a green Ford sedan.

Q. That was a Ford sedan. And when you first saw these lights coming and as they continued toward you, on which side of the white line were they?

A. They were on the west side going south.

Q. That is, both sets of lights?

A. Yes, coming until they got within a certain distance of me.

Q. And what distance is that that you refer to?

A. I would say approximately about 50 feet.

Q. Then, will you, if you can, just tell the Court, in your own words, now, what happened at that moment that this first set of lights got about 50 feet from you?

A. Well, suddenly this first set of lights swerved across the road, with the back end of the car, the rear end of the car going clear off of the pavement.

The Court: Off of which side?

The Witness: On my side of the road, which would be the east side of the road. They came clear across the road.

The Court: Yes.

The Witness: And then they came back, started back south at an angle, coming in at me on an angle, and I looked over the front of my truck and saw, who afterwards was identified as Mr. Uarte, as the driver of the car, trying very [125] frantically to get his car back on his own side of the road, which he didn't do, and he struck me, approximately we figured, right in the right front wheel or approximately in that position in the truck.

The Court: You were going the opposite direction?

The Witness: Yes.

(Testimony of Don A. McCoy)

The Court: And he hit you in the right front wheel?

The Witness: Yes, sir—Well, approximately. The truck was damaged from the middle of the radiator to the right side and down the right side of the tractor part of it.

The Court: Well, what part of his car hit yours?

The Witness: I couldn't tell exactly. I imagine it was the left front.

The Court: In other words, you were going north and his car skidded over and hit you, off of his side of the road?

The Witness: Yes. Here was my vehicle going this way and he came in at an angle, which would be the south-west.

The Court: Go over to the board. You don't need to take any chalk. And just give me an idea.

The Witness: Here is the truck (indicating on black-board).

Mr. McKnight: Will you take the pencil and point and mark it? [126]

The Witness: All right. Here is the truck (indicating). This car came across the road. It was pointed in this direction, due in front of me.

The Court: Yes, I understand.

The Witness: Possibly this isn't exactly the way it was. And it came right out and struck the right front end of my truck.

The Court: The back end?

The Witness: No, the front end; the front end of his car struck the front end of my truck.

The Court: All right.

(Testimony of Don A. McCoy)

The Witness: And assuming from the damage that was done on the—

Mr. McKnight: Let us not assume anything.

The Court: All right.

Mr. McKnight: All right. Will you take the witness stand.

(Witness returns to witness chair.)

Q. By Mr. McKnight: Now, isn't it a fact, Mr. McCoy, that almost instantly before the Uarte automobile swerved across to the left side of the road, that you at that moment saw the lights of the car behind it again?

A. I don't recall.

Q. Do you remember when the District Attorney of Madera County came out there immediately after the accident and asked [127] you how the accident happened, and you told him?

A. Well, I don't remember exactly word for word.

The Court: Well, do you remember the occasion of telling him?

The Witness: Yes, I do.

The Court: And when you told him that, at that time, that was fresh and immediate in your recollection?

The Witness: Yes, sir.

The Court: And if that statement were shown to you, would it refresh your recollection, now?

The Witness: I believe it would, yes, sir.

The Court: All right. If you have the statement there, have a copy of it, have you?

Mr. McKnight: Yes, and that is one of the statements that we have stipulated as an authentic transcript.

The Court: All right. Just show the whole statement to the witness, if you desire.

(Testimony of Don A. McCoy)

Mr. McKnight: Very well.

The Court: It is that long?

Mr. McKnight: Yes, your Honor, it is a very long statement.

The Court: Well, I will let him read it all the way through.

How long has it been since you have seen it, Mr. Witness?

The Witness: Since October. [128]

The Court: Well, I will hear a short witness and he can read it all the way through and he can refresh his recollection, because apparently some things are not clear in your mind, now.

The Witness: I have a notoriously poor memory, anyway.

The Court: You are driving a truck all the time. All right. We will have a short recess.

Mr. McKnight: Mr. McCoy, will you just step down here?

The Witness: Yes.

(Whereupon a short recess was taken.)

Q. By Mr. McKnight: Have you read this statement that you gave to the District Attorney of Madera County at the scene of the accident immediately after it happened?

A. I read the points that I was not familiar with, yes, sir, but I didn't quite recall.

Q. All right. Does that refresh your memory?

A. Yes, sir.

Q. Do you believe now that immediately before the Uarte car swerved to the left that you did see the lights of another car?

A. Yes, sir.

(Testimony of Don A. McCoy)

Q. And will you state to the Court now what the impression was that you got, what appeared to you to happen there?

A. This was what appeared to me, your Honor, it is an assumption, it is a conclusion that I came to, was that— [129]

Mr. McKnight: Just a minute.

The Court: No.

The Witness: Well, the statement—

Q. By Mr. McKnight: It is your impression from what you saw?

A. Yes, sir, that is right; the impression, that is what I mean, yes, sir.

Q. All right.

A. The impression that I got at that time was that the car either skidded or was clipped.

The Court: Or was clipped?

The Witness: Yes, sir.

Mr. Deutz: I object and ask that that be stricken on the grounds it is a conclusion of the witness, his opinion.

Mr. McKnight: It is a matter of description. It is pretty hard for a witness, in the English language, who saw two lights—

The Court: Yes; he saw two pairs of lights.

Mr. McKnight: Two pairs of lights.

The Witness: Two pairs of lights, yes.

Mr. McKnight (continuing): —to describe what he found, without speaking in impressions, and I think that that is permissible.

The Court: Now, do you recall how you saw the two pairs of lights—In other words, if I understand, up to [130] this moment you hadn't seen but one pair of

(Testimony of Don A. McCoy)

lights approaching, and then the pair of lights back of them, and then the pair, rear pair of lights obscured by the first car, and then immediately before the skidding of the car attached to the first pair of lights, you saw the pair of lights from the car behind?

The Witness: That was as near as I can recollect, your Honor.

The Court: And do you recall whether or not they were at the side or what?

The Witness: No—Well, I don't know.

The Court: I mean, how close were they behind the car?

The Witness: They were very close.

The Court: Very close.

Q. By Mr. McKnight: Did they not seem to you at that time, as you have said—

Mr. Deutz: May I have a ruling, your Honor?

The Court: Well, I am trying to get this, before I rule on your motion.

Mr. Deutz: That is why I was objecting to any further questioning by counsel.

The Court: No. I think it is permissible. In other words, before I rule on your motion to strike his answer that it was clipped, I want to get—let counsel ask his question.

Q. By Mr. McKnight: Haven't you stated before, didn't [131] you state in your deposition in the Madera State Court case that at that time the two lights seemed as one, they were so close that they seemed as one?

A. Yes.

The Court: That is, the two pairs of lights.



(Testimony of Don A. McCoy)

Q. By Mr. McKnight: The two pairs of lights were so close at that moment that they seemed as one, is that right? A. Yes.

Q. And did you not tell the District Attorney there the night of the accident, these words: "I don't know. They just seemed to bunch and jump. It was pretty fast." Do you remember that? A. Yes.

The Court: That is, when they bunched, you mean you saw four lights, or couldn't you tell whether they were beside each other?

The Witness: There were more than two.

The Court: There were more than two lights that you could see along in your range of vision?

The Witness: That is right.

The Court: But not behind one another?

The Witness: I don't recall just exactly.

The Court: Well, is that what you meant by your statement, in other words, you saw two lights, and did you see the other two lights behind them, or is it your present [132] recollection, your best recollection, that you saw more than two lights?

The Witness: More than two lights.

The Court: More than two lights facing you?

The Witness: Yes.

The Court: But not one behind the other?

The Witness: Well, they could have been just a little bit off, you know, one way or the other.

The Court: But it was enough so that you could see them?

The Witness: Yes, sir.

(Testimony of Don A. McCoy)

Q. By Mr. McKnight: And there was sufficient so it appeared to you that one of them had clipped the other one?

A. Well, something happened. I don't know what happened.

Q. Well, to refresh your memory, I will ask you if these questions were asked you and these answers were made by you to the District Attorney on the night of the accident, for the purpose of again refreshing your memory:

"Q. Do you have the impression that these cars coming towards you were abreast at the time you approached them?

"A. Well, I would really rather not say. I couldn't hardly make a statement, but they were awfully close together. They were just like one. [133]

"Q. You aren't able to say whether they were abreast, or whether one was passing the other?

"A. No.

"Q. Can you say this: both appeared to be in the southbound lane together, coming toward you?

"A. It appears to me that one clipped the other and threw him there, or one blew a tire, or something.

"Q. As this car swerved toward you, the Ford Sedan that hit you first, did it turn suddenly toward you, or gradually turn toward you?

"A. It pulled right into me. It just seemed to fairly jump out there. That is the reason that I thought he got clipped or blew a tire. It seemed like he was on one side and right now he was over there."

(Testimony of Don A. McCoy)

Do you remember those statements?

A. Yes, sir.

The Court: Are those true?

The Witness: To the best of my knowledge, yes, sir.

Mr. McKnight: We will submit the matter, your Honor.

The Court: Motion to strike is denied.

Q. By Mr. Knight: Now, when this leading vehicle swerved to the left, as you say, and I want to ask you this directly now (it is in this other statement), did it swerve gradually or how would you describe it?

A. Well, as I described it in the deposition, he just [134] zooped over there.

Q. Do you know what we mean by a right angle? A right angle would be straight across the roadway like this (indicating)? A. Yes.

Q. Would you say that he did or did not go across the roadway at approximately a right angle?

A. Well, it is pretty hard—that time element there was so fast.

The Court: And you were moving?

The Witness: Yes.

The Court: And about how fast were you going?

The Witness: About 40 miles an hour.

The Court: About 40 miles an hour.

Q. By Mr. McKnight: Well, again to refresh your memory—

Counsel, you have seen this?

Mr. Deutz: That is right.

Q. By Mr. McKnight: I will show you—

The Court: Mark it for identification, 14.

The Clerk: Plaintiff's Exhibit 14 for identification.

(Testimony of Don A. McCoy)

(The drawing referred to was marked Plaintiff's Exhibit No. 14 for identification.)

The Court: To the best of your recollection, was the leading car clipped from the rear or from the front? [135]

The Witness: Well, I wouldn't say—from the rear.

The Court: From the rear?

The Witness: The leading car was clipped.

The Court: Clipped from the rear.

The Witness: If it was clipped, it would be—

The Court: Well, that is your recollection?

The Witness: Yes. It was either clipped or he blew a tire, your Honor, something that caused him to go across there.

The Court: Well, your recollection is that, under that statement you made, as I understood, you said that was a true statement that you gave him at that time, that he was clipped?

The Witness: No.

Mr. Deutz: No. I would like to correct it in the record, the statement. I believe he stated he was clipped, blew a tire, or skidded, or something.

The Court: All right.

Mr. McKnight: He said the cars just seemed to bunch and come like one, was that statement of his there.

Q. Now, I show you, Mr. McCoy, a photostatic copy of a blackboard map which purports to be a true representation of the blackboard map which was used in the former trial in Madera County. You remember that, do you not? A. Yes.

Q. Do you recognize that diagram now? [136]

A. Yes.

(Testimony of Don A. McCoy)

Q. Now, I show you on this photostat a line marked M-3, which goes almost at a right angle across the highway and then in a southwesterly direction down toward a rectangle which is marked M-1. Was that the course of the vehicle as you drew it at the time of the other trial?

A. Approximately, yes, sir; to the best of my recollection, it was.

Q. And is that still your best recollection of the course that the Uarte car took when it went to the wrong side of the road?

A. Yes, sir.

Mr. McKnight: We ask that that be introduced in evidence as Plaintiff's Exhibit No. 14, your Honor.

The Court: Admitted.

The Clerk: 14 in evidence.

(The drawing heretofore marked Plaintiff's Exhibit No. 14 for identification was received in evidence.)

Mr. McKnight: Your Honor, the line M-1 goes right across here (indicating).

The Court: I see.

Mr. Deutz: Your Honor, I would like admission of that document limited to the extent that it is testified to in this particular case.

The Court: Limited to the examination made of this [137] witness; that is to say, the M-1 line.

Mr. McKnight: Yes, your Honor. That is the only purpose I have.

Mr. Deutz: I believe it was M-3, was it not?

The Court: M-1.

Mr. McKnight. Is it M-1 or 3?

The Court: Well, it is M-1 and M-3, I suppose. I don't know. Ask the witness.

(Testimony of Don A. McCoy)

Q. By Mr. McKnight: The line is M-3 and your truck as placed on it at that time is M-1, isn't that right?

A. Yes.

Mr. McKnight: The answer is "Yes," your Honor.

The Witness: Yes.

Mr. McKnight: And it is understood that the only purpose is to establish that particular testimony.

The Court: Wait a minute. Now, the line is M-3 and M-1 is his truck?

Mr. McKnight: Yes, and the line as he drew it, if your Honor please, purports to run from the point where it starts clear down to his truck there.

The Court: Well, that is the line his truck took?

Mr. McKnight: No. That is the line that the Uarte car took, your Honor.

The Court: Oh, I see.

Q. By Mr. McKnight: In other words, if I may ask the [138] leading question. It is your memory that the Uarte car went across the highway like that (indicating on blackboard)?

A. Yes.

Q. And then down into your truck?

A. Yes, sir.

The Court: And then beyond your truck?

Mr. McKnight: And beyond the truck, in the end.

The Court (continuing): When it finally stopped?

The Witness: Yes, sir.

Mr. McKnight: When it finally stopped.

The Court: Yes.

Mr. McKnight: All right.

The Court: You proceeded—Well, I was going to say northerly?

The Witness: I don't know, your Honor.

(Testimony of Don A. McCoy)

The Court: Did you get knocked out, too?

The Witness: No, but my lights were out until when we stopped. When we stopped, we were on the wrong side of the road.

The Court: You started skidding?

The Witness: Immediately after the first car hit us.

The Court: Immediately after the first car hit you?

The Witness: No.

The Court: You don't know? [139]

The Witness: No.

The Court: You knew whether or not you were skidding?

The Witness: No.

The Court: Can you tell from your seat whether you were skidding or not?

The Witness: No, not—I think I was sitting up on top of the cab pretty near. I don't know what was going on after the two impacts.

The Court: After the two impacts?

The Witness: Yes.

The Court: How soon after the first impact did the second one occur?

The Witness: Practically immediately.

The Court: Instantly?

The Witness: Within the same second, I think they determined.

The Court: Well, can you show by clapping your hands together and indicate the interval between the claps as to how soon that happened, like giving the first one and then wait until the second one?

The Witness: Let's see, it is pretty hard to do, to be exact, but the first one (witness claps hands) was



(Testimony of Don A. McCoy)

like that, and then it just seemed like there was another one (witness claps hands), practically immediately afterwards.

The Court: Well, do that again, will you? [140]

(The witness claps his hands twice, with an interval of time between each clap.)

The Court: Wait a minute. Now, I did not start my stop watch. All right, do it again.

(The witness again claps his hands twice, with an interval of time between each clap.)

The Court: That is about—

Mr. McKnight: Approximately a second, I would say.

The Court: Approximately a second.

The Witness: They were awfully close together, your Honor.

The Court: To you, they seemed—

The Witness: Very close.

The Court: —almost immediately?

The Witness: Almost. You know what I mean.

The Court: Instantaneously?

The Witness: Yes.

The Court: Did you know where the other car hit your car, what happened then, or how it hit?

The Witness: Well, it hit on the front, and I knew that because I did get a glimpse, I believe, of it—

The Court: Of the station wagon?

The Witness: —of the headlights, but I did not know what it was, naturally, but I did get a glimpse of the headlights. [141]

The Court: Yes.

(Testimony of Don A. McCoy)

The Witness: In what position or where I was at the time, I do not know.

The Court: All right.

Q. By Mr. McKnight: As I understand it, Mr. McCoy, you were never at any time in a position where you could estimate the speed of either of these other vehicles? A. No, no, I could not say.

Q. And the Uarte car, as you testified, struck your tractor or truck in the proximity of the right front wheel?

A. Yes.

Q. And immediately upon that impact taking place, what happened as far as you can remember in reference to your truck? A. Well, my lights went out.

Q. And what happened to the steering wheel, do you remember?

A. And the steering wheel started spinning.

Q. The steering wheel started spinning, and then there was another impact immediately? A. Yes.

Q. Would you say, to the best of your ability, which was the most severe of those impacts, the first or the second one?

A. I would say the second one was. [142]

Q. The second one was the most severe?

A. Yes, sir, that is to the best of my knowledge.

Q. To the best of your knowledge, the best impression you have of it? A. Yes.

Q. Then, your vehicle came to a stop in approximately the position that the officer has—Well, you haven't seen that?

A. No, sir, I have not.

Mr. McKnight: By the way, your Honor, may I at this time substitute photostatic copies for Plaintiff's Exhibit No. 13 and return the original to the traffic officer?

(Testimony of Don A. McCoy)

The Court: Well,—

Mr. Deutz: That is all right, your Honor. I have examined them.

The Court: Well, this is yours—

Mr. Deutz: Oh,—

The Court: Did you get any white ones?

Mr. McKnight, he said, your Honor, he could not get the white ones in the time he had designated to do it.

The Court: All right.

Mr. McKnight: Shall I have these marked?

The Court: Yes; 13.

Mr. McKnight: May I return the originals to the officer? [143]

The Court: Yes. The record will show that they are returned to the officer who testified this morning, Mr. Deming.

Mr. McKnight: Deming.

The Court: Deming. All right, now, have you an extra one of those, so I can be looking at it while you are showing it to the witness?

(Mr. McKnight hands copy of said exhibit to the Court.)

The Court: This is the same?

Mr. McKnight: Yes, sir.

Q. Now, I show you Plaintiff's Exhibit No. 13, Mr. McCoy, and point out a trailer, semi and tractor as they were drawn upon that exhibit by the traffic officer, and ask you if that is your recollection of the location of your equipment after the accident had occurred and after you were able to examine it?

(Testimony of Don A. McCoy)

A. Yes. I was in doubt of those at the other trial and I looked at the pictures to determine that my tractor and semi was off the highway a little bit.

Q. And at that time when off the highway, it was off of the left side of the highway?

A. Yes, headed south.

Q. Indicating that the vehicle during the accident at some time had passed from the right-hand lane over across the left-hand lane and off on the shoulder? [144]

A. That is right, yes, sir.

Q. Now, were you in court this morning when the officer testified? A. Yes.

Q. And you heard him testify as to some gouge marks which were in the easterly lane of traffic, that is, the east lane of traffic that you were driving in before the accident? A. Yes.

Q. Did you see those gouge marks? A. Yes.

Q. Will you state to the Court, to the best of your ability, where, in relation to those gouge marks, the front end of your truck was at the time of the first impact with the Uarte car?

A. I have no idea of knowing—no way of knowing.

Q. You have no way of knowing? A. No, sir.

Q. Well, you saw the gouge marks there the night of the accident, didn't you, Mr. McCoy?

A. Yes, I saw them there and I might—maybe in my deposition I might have been—

Q. Let me refresh your memory again, if I may. I have the exhibit, which is the blackboard map.

A. But now I don't recall. [145]

(Testimony of Don A. McCoy)

Q. I show you Plaintiff's Exhibit 14, which was the blackboard map made at the trial in Madera County, and call your attention to the fact that you place your truck right approximately at the point of those—

A. Gouge marks.

Q. —gouge marks; was that your recollection at that time?

The Court: That was the front of your truck?

The Witness: Yes, I guess it was at that time.

Q. By Mr. McKnight: And do you remember whether or not you did not so testify, that it was at the approximate position, or do you remember?

The Court: He just said it was.

Mr. McKnight: Yes.

The Court: It doesn't make any difference what his testimony was. He said it was.

Q. By Mr. McKnight: That is your recollection as best you can place it? A. Approximately.

Q. That the first impact took place at approximately in the vicinity of those gouge marks?

A. Oh, yes; yes. I didn't follow your question at the beginning.

Q. You didn't understand my question a few moments ago? [146]

A. No. I thought you were trying to determine whether I knew actually for a fact that was the position I was in.

Mr. McKnight: Your recollection.

The Court: Your recollection is that that was approximately the location?

The Witness: Yes, approximately.

(Testimony of Don A. McCoy)

Mr. McKnight: All right.

Q. Before the Uarte car went across the highway onto your side, as you have described, was it driving on its own right-hand side of the white line?

A. Yes, sir.

Q. Was it swerving or swaying or zig-zagging, to your knowledge?

A. No, sir.

Q. That was the first deviation from a straight course when it suddenly appeared to jump across the highway?

A. Yes, sir.

The Court: Where was the second body found, of the sailor?

The Witness: In the station wagon, your Honor.

The Court: He was in the station wagon?

The Witness: That is what they say.

The Court: Does the officer remember? I mean, can you produce that testimony? [147]

Mr. McKnight: Yes, sir; if the officers are still here, I can ask them, your Honor.

The Court: Do you know, did you notice?

The Witness: I never looked at the station wagon. I was told—See, he didn't die until the next morning.

Mr. McKnight: I will put the officer on for that purpose, your Honor.

The Court: All right.

Mr. Deutz: Might he locate the positions P-1, 2 and 3 on that map?

Mr. McKnight: I don't know.

Q. And as I understood you to say,—Let me withdraw that.

(Testimony of Don A. McCoy)

When the Uarte car went across the highway in front of you, as you have described it, did it go directly into your headlights at that time?

A. To a little easterly.

Q. It went across your headlights?

A. Across my headlights.

Q. And as it went across your headlights, could you see the driver of that vehicle?

A. Not until he started toward me.

Q. Oh, I see, and as you saw him, you say he was trying frantically to get his car back?

A. Yes, sir. [148]

Q. Can you describe what he was doing?

A. He was sitting up in the car. He was very alert and he was trying to pull the steering wheel back. He was sitting up high in the car and had a good grip on the steering wheel trying to pull it back.

Q. To its right?

A. Yes, sir, just immediately before the impact.

Q. You described where the Uarte car struck your vehicle in the proximity of the front, the right front wheel. Where was it—on what part of your vehicle was the impact of the other vehicle, or the second impact, we will put it that way?

A. Approximately in the same part of the truck.

Q. Approximately in the same position. In other words, the two collisions were, as far as you could tell, in the same spot on your tractor?

A. Approximately from the middle of the radiator over to the right-hand side.



(Testimony of Don A. McCoy)

The Court: Where it was damaged?

The Witness: Yes, sir. That is where it was damaged.

Mr. McKnight: I think that is all, your Honor.

The Court: Cross examine.

Cross-Examination.

By Mr. Deutz:

Q. Mr. McCoy, I believe you testified that you first [149] noticed these cars—

Mr. McKnight: Would you excuse me just a moment, your Honor? At the end of our testimony we are going to need a doctor from Madera, and he was one witness who I thought we could call at any time without inconveniencing people who are from out of town. And therefore, I haven't asked him to come. I hate to ask these doctors to stay away from people who need them all day long. Could it be understood that if we do finish before this evening, counsel could start his case, so I could call that witness sometime toward the end of the trial?

The Court: How many more witnesses have you?

Mr. McKnight: I have the two men who were in our vehicle, your Honor, which should be very short.

The Court: And Mrs. McCoy?

Mr. McKnight: No, I don't intend to call her. Maybe the District Attorney will.

The Court: Yes. Well, they are your witnesses.

Mr. McKnight: And I think that that is all I will have.

The Court: Well, how long does it take the doctor to get here from Madera?

Mr. McKnight: Well, if he isn't engaged at something that he can't just leave immediately, he can get here

(Testimony of Don A. McCoy)

in about three-quarters of an hour. The reason I mention it [150] now, if it is necessary to call him tonight, I would like to have the opportunity.

Mr. Deutz: I have no objection to calling this man after they have concluded. If you want to call him later in the case, that is all right as far as we are concerned. We have witnesses here. I have four men from San Francisco. Mrs. McCoy is here from Oakland, and I have two witnesses present in court from Madera. If this matter is going to be recessed by any chance for a day or two, I think they should have a chance to testify.

The Court: I don't know. I haven't anything to do tonight.

Mr. McKnight: I would be very pleased to try to complete it, because it is very difficult for my client, who is a working man, to stay away for two or three days.

The Court: If you want to have the doctor here, say, for an evening session, I suppose you would be able to get him at maybe about 5:00 o'clock and have him here about 7:00 o'clock.

Mr. McKnight: I think I could, unless there is some emergency that would keep him from coming. With physicians we sometimes have to consider those things, but that at least would permit us to get other witnesses on, who are away from home, from a distance, and I would be perfectly willing to do it. [151]

The Court: Well, we will finish with this witness and your other two witnesses and then I take it that it is stipulated by the government that the plaintiff's case will not be closed without the doctor's testimony, but that you may call him, and the government go forward.

(Testimony of Don A. McCoy)

Mr. Deutz: I will stipulate that it will not be closed, but I believe the doctor's testimony will go strictly to the measure of damages, and if there are any appropriate motions as to the plaintiff's case, I can make the motions.

The Court: Let me suggest, for the purposes of the record, the stipulation be that the plaintiff does not rest but that you call your witnesses out of order who are here.

Mr. Deutz: Well, your Honor, I would like it this way: If we call our witnesses out of order, it might prejudice my motion which I might make at the close of the plaintiff's case.

Now, the doctor they wish to call is important only on the measure of damages, and our motion will be directed to strictly whether or not negligence has been established.

I would like to say the case is closed for that purpose, excepting as to further testimony on the question of the measure of damages.

The Court: Well, let us get on. We can get the doctor here. [152]

Q. By Mr. Deutz: Mr. McCoy, when you first saw these cars coming down the highway toward you, I believe they were approximately 750 feet away from you, is that correct? A. Yes.

Q. At that time, you noticed two separate sets of headlights? A. First one and then the other.

Q. It appeared to you that those two sets of headlights came a little closer to you. A. Yes.

Q. And at one time the second lights appeared to be obscured by the first, is that right? A. Yes.

Q. Or at least one or the other was obscured?

A. That is right.

(Testimony of Don A. McCoy)

Q. At any time prior to the swerving of the plaintiff's vehicle into your path, did you notice either car out of their own particular lane of traffic; in other words, they were headed southbound, at any time did you ever see them swing into the northbound lane? A. No, sir.

Q. Did you ever see one car or the other abreast of each other? A. Well,—

Q. Or were they single file? [153]

A. To the best of my knowledge, they were.

Q. They were what? A. Single file.

Q. They were single file.

The Court: When you say to the best of your knowledge, do you mean to the best of your recollection?

The Witness: To the best of my recollection.

Q. By Mr. Deutz: At any time do you ever recall the two cars being abreast of each other?

Mr. McKnight: Now, by "abreast," counsel, do you mean—

Mr. Deutz: I mean either side by side or at least you could see the four headlights lined up against you? That would be the best indicia at nighttime.

Mr. McKnight: By "abreast," you mean normally with the two headlights even?

Mr. Deutz: No. That is not what I mean.

Q. I mean, at any time did you notice one car and the other car apparently side by side or at least those four lights appeared to be in a row?

A. Well, I saw all four lights at one time.

The Court: Just before the accident?

The Witness: Just before the accident.

Q. By Mr. Deutz: Yes, but were those four alongside of one another, or did you see one and then the other?

(Testimony of Don A. McCoy)

A. From a distance they could appear to have been [154] alongside of each other, when in reality they could have been 25 feet behind each other.

Q. But immediately prior to the accident itself, did you see four headlights at any time, immediately prior to the accident; I mean, within, say, 100 or 150 feet?

A. Well, that is approximately—No, it wasn't that far, that they came together.

Q. You saw the two came close together?

A. Yes.

Q. At any time did you see an impact between those two vehicles?      A. No, sir.

Q. An actual vehicle impact?      A. No.

Q. At any time did you hear the sound of an impact between those two vehicles?      A. No, sir.

The Court: Well, could you have with your motor?

The Witness: No, sir.

Q. By Mr. Deutz: Your vehicle makes too much noise?      A. Yes, sir.

The Court: Was it a Diesel?

The Witness: No; a 324-horsepower Heil-Scott, bearing butane.

The Court: I think I can take judicial notice that [155] they make noise.

Mr. Deutz: I think you can, your Honor.

Q. At no time did you see the vehicles come into actual contact with one another?      A. No, sir.

Q. And you saw the two cars come fairly close together. Did you see anything to indicate that the first car might have decelerated or put on its brakes and so brought the two cars together?      A. No.

(Testimony of Don A. McCoy)

Q. Likewise, you cannot say definitely the speed that one was overtaking the other or that they were being overtaken? A. No.

Q. The plaintiff's car, you say, swerved toward you when about 50 feet away from you it started to swerve toward you, is that correct?

A. Yes, sir; it swerved fast across the road.

Q. It swerved fast?

Mr. McKnight: Just a moment. Did the reporter get the rest of that answer, "fast across the road"?

The Witness: Across the road.

Q. By Mr. Deutz: Calling your attention to Plaintiff's Exhibit No. 14, you pointed out a position on this diagram which is marked M-1. Was that the position of your vehicle [156] at the time of the impact, or was Point M-2 the position of your vehicle at the time of the impact?

A. No. You have this a little confused, counsel. This (indicating) is the position, approximate position of the Uarte car when it immediately went across the road.

Q. When it immediately went across the road?

Mr. McKnight: Wait a minute. Let us get that for the record. He is now pointing to M-2 on Plaintiff's Exhibit No. what?

Mr. Deutz: 14.

The Court: 14. He is pointing to M-2. I thought that was M-1.

The Witness: Here is M-1 here (indicating).

The Court: Oh, M-1.

The Witness: Yes.



(Testimony of Don A. McCoy)

The Court: M-2, that is the Uarte car after it got across the road and finished skidding?

The Witness: That is right, sir.

The Court: And M-3 is when it started from the line?

The Witness: Yes, sir.

Q. By Mr. Deutz: Now, position M-3, then, is where the vehicle first started to swerve, Mr. Uarte's vehicle first started to swerve; M-2 is the position that the vehicle reached, its farthest eastward position toward the dirt edge of the road, and then apparently Mr. Uarte's vehicle [157] started on a diagonal line back across your lane of traffic heading southwest from the edge of the pavement toward the center of the line, and the point of impact was approximately M-1; is that correct?

A. Yes.

Q. And that is also the place where there are some gouge marks which are marked on this particular diagram as position D-1; is that correct?

A. I don't know what they are—D-1, yes, it is gouge marks there.

Q. The gouge marks were approximately at the point of impact? A. Yes.

Q. Very well. Now, you stated, I believe, that there were two impacts involving your vehicle, is that correct?

A. Yes.

Q. Weren't there, in fact, three impacts?

A. There was a slight impact.

Q. Now, wasn't it a fact that you had two impacts very close together and then a break and then a third impact?

A. Yes; there was three impacts.



(Testimony of Don A. McCoy)

Q. There were actually three impacts. Now, I would like to ask you this: What is the color of this Golden State vehicle?

A. It was cream and with a red stripe, with white in [158] the center.

Q. All right: I want to ask you whether you found any signs on the semi-trailer, the semi of your vehicle, of any indications of an impact, any scratching or damaged portion on the semi?

A. Yes, we did.

Q. That was at what position on the semi?

A. That was on the right side of the semi; I believe it was very close to the rear end of the semi.

Q. Now, that is a distance of approximately 25 or 30 feet from the very front extremity of the vehicle, is it not?

A. It is further than that. It is—I think that is a 24-foot box.

Q. A 24-foot box.

A. So it would be about—

Q. About a 12-foot tractor, isn't it?

A. And from the point where the piece sets on the tractor forward I think would be more, about 9 feet, I would say.

Q. About 9 feet. 9 and 24 would be approximately 33 feet.

A. Approximately.

Q. Approximately 33 feet from the front bumper of your truck to the second point of impact on the semi?

A. That is approximately. I think the trailer is an [159] 18-foot trailer and a 4-foot tongue. That would be a 22. It is approximately that, yes.

Q. And there was damage to the semi there, where some object—

A. Yes.

Q. —had damaged, scraped along there along that side?

A. Yes.

(Testimony of Don A. McCoy)

Q. Did you have occasion to observe, examine Mr. Uarte's vehicle after the accident?           A. Yes.

Q. Did you notice any paint marks on that vehicle, I mean color foreign to the natural color of that car?

A. Yes.

Q. On what part of the body of Mr. Uarte's vehicle were they located?

A. As near as I can recollect, it was on the left rear corner.

Q. The left rear corner of Mr. Uarte's vehicle had paint marks on it, is that right?

A. I believe so.

Q. And what color were those paint marks?

A. They were cream.

Q. They were cream. Was that the same cream color as you have on your semi? [160]

A. It was the same color. Whether it was the same paint or not, I don't know.

Q. It was the same color?           A. Yes.

Q. Mr. McCoy, the officer testified that on the morning following the accident they found some gouge marks on the highway.

Do you have your Exhibit 14?

The Court: 14?

Mr. Deutz: I don't know. It must be 13.

The Court: 13. Well, you have another copy there, you yourself.

Mr. Deutz: I don't have one. This is 14.

The Court: This is just an extra copy of 13.

Mr. Deutz: That is my 14 and I don't have a copy of 13.

(Testimony of Don A. McCoy)

The Court: These are not marked. You have two that are not marked.

The Clerk: Yes, that is right.

The Court: He wants to see them.

Q. By Mr. Deutz: I show you a second sheet of Exhibit No. 13, where it was testified that there were gouge marks on the most westerly lane of the highway, that is, on the southbound lane, and I would like to ask you whether at any time your vehicle was in that position? Did your [161] vehicle ever pass into the right—the southbound lane at this point? We have here some skid marks at a point farther north, approximately 70 feet, 65 to 70 feet north, which on the first page of Exhibit 13 would appear to be in the location of the trailer and the tractor, your tractor, trailer and semi at the time it came to rest. Now, due south of there about 60, 65 feet there are some gouge marks in the pavement. I would like to ask you, whether to the best of your knowledge, you know whether your rig was ever in that position on the highway?

A. That was below where I ended up at?

Q. Yes, below where you ended up? A. No, sir.

Q. Did you make a very sharp turn to the left when you lost control of your rig, or did you make a fairly easy turn?

A. No. We made—to have covered the—

The Court: No. Just what you remember now.

The Witness: Yes.

The Court: I asked you on direct, if I remember it, and you said you did not remember.

The Witness: Well, then, I don't know.

The Court: Then, you don't know what happened?

(Testimony of Don A. McCoy)

The Witness: I don't know, then.

The Court: Well, is that a fact? I mean, do you [162] remember, or are you just trying to deduct, now, that you did or didn't?

The Witness: Well, the wheels started spinning.

The Court: And then what happened after that?

The Witness: I took off up in the air, then.

The Court: You don't know?

The Witness: No.

The Court: You had been bounced, had you?

The Witness: Bounced twice.

The Court: You had been bounced twice from your seat?

The Witness: That is right.

The Court: So, not only did the wheels start to spin, but you did not have any control of yourself?

The Witness: That is right, yes, sir.

The Court: All right. I suppose at that moment you were thinking about yourself rather than—

The Witness: I was thinking about the "boss."

Mr. Deutz: We will stipulate that Mrs. McCoy was riding with him.

Q. Now, at the time that Mr. Uarte passed in front of you with the car, I believe you stated that you could see him struggling with the wheel of his car?

A. That was after he tried to straighten up.

Q. After he tried to straighten out? Didn't his lights blind you at all? [163]

A. No, sir. No. We sit pretty high.

Q. You sit pretty high? A. Yes.

Q. You are able to look down over the lights.

(Testimony of Don A. McCoy)

You stated that there were three impacts. Would you be able to space as to time the lapse of time between the three impacts? You stated, first, that there was an impact (Mr. Deutz illustrates by clapping his hands once), and another impact (Mr. Deutz illustrates by clapping his hands once), which was timed at approximately one second, and then you have stated that there was a third impact.

Now, which one of those three impacts was the most violent? A. The second one.

Q. The second one was the most violent. The third one, the third impact was violent also?

A. No. It was just a bump.

Q. It was just a bump. About what was the lapse of time between the second and third impacts?

A. I do not recall.

Q. Was it as short a time as between the first and the second, or was there a longer space between the second and third than between the first and second?

A. I would hate to say, because I don't just—it possibly was a little bit longer. [164]

Q. Now, in your statement to Mr. Chandler on the night of the accident—

The Court: Mr. Chandler is the Assistant District Attorney?

Mr. Deutz: Mr. Walter Chandler was the Assistant District Attorney from Madera County, at that time.

The Court: And that is the statement referred to on direct?

Mr. Deutz: And that is the same statement previously referred to. I don't believe it was introduced in evidence, was it?

(Testimony of Don A. McCoy)

Q. You made the statement, Mr. McCoy, at that time you said as follows:

“It appears to me that one clipped the other and threw him there, or one blew a tire, or something.”

And at the same time you had previously stated that you could not definitely say whether the cars were ever abreast, and you have stated here that you cannot say positively that the cars ever came in contact.

Now, Mr. McCoy, was that statement that you made at the time a statement based upon actual notice of particular events that took place, or was it merely a conclusion of what might have been a possible reason for this particular car swerving across the highway in front of you?

A. It was to—It was a conclusion. [165]

Q. It was a conclusion, merely as a means of seeking explanation for what might have taken place?

A. Yes, sir, because I did not see them collide or touch each other.

Q. You did not see them touch each other?

A. That is right.

The Court: Have you seen other cars clipped?

The Witness: Yes; yes, I have, lots of times.

The Court: Have you seen other cars blow tires?

The Witness: Yes, sir.

The Court: Do they always act the same?

The Witness: Sometimes they act the same, yes, they do.

The Court: Generally?

The Witness: Generally.

The Court: This car acted like it was either clipped or blew a tire?

(Testimony of Don A. McCoy)

The Witness: Yes, sir.

Q. By Mr. Deutz: I would like to ask you a question: Mr. McCoy, from your experience,—How long have you driven trucks or automobiles?

A. 20 years.

Q. For 20 years, and you have driven them in all types of weather? A. Yes, sir. [166]

Q. Have you had occasions where you have had flat tires rather than blowouts on a highway in rainy weather?

A. Yes.

Q. I would like to ask you this hypothetical question: In your experience in driving vehicles over a considerable period of time, if you were driving along a wet, slippery road, and you had a flat tire, not a blowout but just a flat tire, and you suddenly put on your brakes, what would be the effect?

Mr. McKnight: Just a moment. To which we object on the grounds that the hypothetical question, if your Honor please, is not based upon any evidence in the case; therefore, it is improper and calls for a conclusion and opinion of the witness on a question that is not the subject of expert testimony, also. There is no testimony in the record of anything from which it can be inferred that that set of facts took place.

The Court: Well, he has testified that it was either clipped or had a flat tire. The objection is overruled.

Q. By Mr. Deutz: What would be the effect of suddenly putting on your brakes under those conditions?

The Court: In your opinion.

A. Well, it would swerve you, not depending entirely upon which tire it was, whether it was front or back



(Testimony of Don A. McCoy)

or on which side, which would determine, have some factor in [167] determining which way you would go, but it would definitely throw you into a slide or a skid in one position or the other.

The Court: Or a swerve?

The Witness: Or a swerve, yes, sir.

Q. By Mr. Deutz: Now, under the conditions of the road on that particular night, would you say if a person had a flat tire and suddenly put on the brakes, they would skid, swerve, or possibly lose control of their car?

A. They would, yes, sir.

Mr. McKnight: We object on the same grounds, to each of the hypothetical questions.

The Court: The objection is overruled.

Did you take any notice of the speed of the cars that were traveling toward you?

The Witness: No, sir, I couldn't estimate how fast.

The Court: You have seen cars on flat tires, haven't you, as they travel along the road?

The Witness: Yes.

The Court: How fast do they travel when they keep on moving?

The Witness: About 15 miles an hour.

The Court: With a flat tire?

The Witness: If they keep on going, they would.

The Court: If they keep on going. But, if a fellow [168] had a flat tire and he deliberately kept on going, about how fast does he ordinarily travel?

The Witness: He wouldn't travel very fast.

The Court: About 4 or 5 miles an hour?

(Testimony of Don A. McCoy)

The Witness: Because he could not hold the car on the road.

The Court: That is a front wheel or a rear wheel?

The Witness: A rear wheel.

The Court: Did you observe as to whether or not either one of these cars were traveling as if they had a flat tire when you saw them coming over the ridge?

The Witness: No, sir.

Q. By Mr. Deutz: Mr. McCoy, my hypothetical question was directed to the possibility of a sudden flat tire rather than the driving on a flat tire, and my question was that if a tire would suddenly happen to become flat and you put on your brakes on this slippery road, whether you would lose control of the car? Now, would your answer be the same as you have previously given?

Mr. McKnight: Same objection.

The Court: Objection overruled.

Mr. Deutz: Go ahead.

A. I will say this, counsel: It is my belief that if a left front tire went flat, that suddenly went flat without a blowout, but if it was soft and had gone flat and if the [169] man jammed his brakes on, due to the fact that that tire is flat, you have more braking power on that wheel and it would pull you to the left. The same thing would happen to the right, if he had a right front tire that went flat. That has been my experience.

Q. By Mr. Deutz: So, also, if you had put on your brakes and the right front tire should be flat and it should cause you to spin to the right on a slippery road, could it very easily slide sidewise on the highway?

A. It could.

(Testimony of Don A. McCoy)

Q. I believe you also testified that at the time Mr. Uarte's car was swerving, the rear end of that car was the first portion of that car to reach the outer edge of the road on your side of the highway?

A. Yes, sir.

Q. In other words, the back end was swinging around, is that correct?

A. Yes, sir.

Q. Did you have occasion to examine Mr. Uarte's car at the scene of the accident?

A. Yes.

Q. Did you notice whether there were any flat tires on that car?

A. Yes. There were two.

Q. What tires were flat? [170]

A. I don't recall which ones now, but there were two. It was one front and one rear, as I remember, but which tires, I don't remember, I don't recall now.

The Court: Well, here is a photograph of the front of the car. None of them appear to be flat.

The Witness: This side, your Honor, is flat, the right front tire is flat.

The Court: The right front tire?

Mr. Deutz: The right front tire of that car is flat, your Honor.

The Court: Here is the rear.

Mr. McKnight: Yes, the right front tire is flat.

The Witness: And the left rear tire, and you have the concave in your tire here, where it bends.

Mr. Deutz: All right, fine.

The Court: Well, you have been in a number of wrecks before, have you?

The Witness: No, sir.

The Court: Accidents?

The Witness: No, sir.

(Testimony of Don A. McCoy)

The Court: Or seen them?

The Witness: Yes, sir.

The Court: Have you ever seen tires blow in accidents like this?

The Witness: Yes, sir. [171]

The Court: That is, actual impacts?

The Witness: Not actually seen it, no.

The Court: Well, I mean you have seen the result of it?

The Witness: Yes, sir.

Q. By Mr. Deutz: Now, I will ask you this question: Were those tires actually blown in this instance?

A. That I do not know. They were flat. I don't know whether they were blown or not.

Q. You were traveling north; approximately what speed were you traveling?

A. Approximately 40 miles an hour.

Q. And what is the weight of your vehicle?

A. I believe that night I had approximately around fifty-five or fifty-six thousand pounds gross.

Q. 56,000 pounds gross.

The Court: That is the combined vehicles?

The Witness. Yes, sir.

Q. By Mr. Deutz: Do you know whether there is a speed limit on speeds of vehicles of that kind?

A. Yes, sir.

Q. What is that speed limit?

A. 40 miles an hour.

Q. That is a maximum speed limit, is it; is that correct? [172]

A. Yes, sir.

Q. This was a rainy, slippery night, and you were traveling at maximum speed at that time?

A. Approximately, yes, sir.

(Testimony of Don A. McCoy)

Q. In your experience of driving a unit of approximately 55,000 pounds in a rainy, slippery weather, is it your custom to drive such vehicle at the maximum speeds?

Mr. McKnight: To which we object on the grounds it is incompetent, irrelevant and immaterial, and not within any issues of this case. It may be important in some other case.

The Court: Well, what his conclusion is, I think, is immaterial in any case.

Q. By Mr. Deutz: Did you consider it reasonable and prudent to operate this vehicle at that time at the maximum speed limit, considering the weather conditions at the time?

Mr. McKnight: The same objection.

The Court: Objection overruled.

A. Well, a driver determines a lot of things individually.

The Court: Well, did you consider it reasonable and prudent?

The Witness: I did, yes, sir.

The Court: You considered you were driving carefully?

The Witness: Carefully. [173]

The Court: Consistent with all the conditions in your experience, the conditions of the road?

The Witness: Yes.

The Court: The weather, the traffic?

The Witness: Yes, sir; the traffic was light.

The Court: And all those things taken into consideration, you thought you were driving carefully?

The Witness: Yes, sir. I know I wasn't driving over 40 miles an hour. I set the speed at approximately 40 miles an hour. Because we determine our speed by the gear we drive in.

(Testimony of Don A. McCoy)

The Court: You were driving in the 40-mile-an-hour gear?

The Witness: No. I had just shifted into what we call direct fifth from over fourth, and you go into about 37 or 38 miles an hour.

The Court: How many speeds do you have on that?

The Witness: 18.

The Court: 18?

The Witness: 15 ahead and 3 in reverse.

Q. By Mr. Deutz: This maximum speed limitation they set on vehicles of that size is not set according to any particular weather standards, is it? A. No, sir.

Q. In other words, that is your maximum speed in [174] driving, whether in clear weather, on a dry road, dry surface, or under the most favorable conditions, shall we say?

A. It doesn't stipulate that, your Honor.

Q. But at least that is the maximum speed under any conditions?

A. It has been always my assumption that they have taken everything into consideration when they set the speed limit.

Mr. Deutz: Just a moment. That is all.

#### Redirect Examination

By Mr. McKnight:

Q. Mr. McCoy, you say that you did not actually see an impact between the two other vehicles. As a matter of fact, when they were 50 feet from you and all of this started, all you could see of either vehicle was their lights, wasn't it? A. Yes, sir.

Q. And you also stated in answer to counsel's question that your statement to the District Attorney and

(Testimony of Don A. McCoy)

here in Court that the rear vehicle appeared to clip the other vehicle was based—was a pure—was a conclusion. That conclusion or impression, or whatever you want to call it, was based on what you saw there, then, that night, wasn't it?

A. It was based on the actions of the Uarte car.

Q. And also on the actions of the other car when you [175] saw the two lights bunched together and then one started skidding, wasn't it?           A. Yes, sir.

Mr. McKnight: That is all.

The Court: Here is Exhibit No. 10. This has been testified to be a photograph of your truck outfit that night, and is that the extreme rear end of your trailer?

The Witness: The semi-trailer, the first unit.

The Court: Oh, this was the extreme rear end of the semi-trailer, the first unit?

The Witness: Yes.

The Court: All right. The witness may step down and be excused.

Mr. McKnight: One more question about that, your Honor.

Q. You say that you did examine the Uarte car after the accident happened. Did you see any damage on the left rear fender of that car?

A. Well, as near as I can recollect—

The Court: Well, here is the photograph.

The Witness: Yes.

The Court: That is Exhibit No. 3.

Q. By Mr. McKnight: The damage appearing in that photograph appeared on the car when you saw it at that time, is that right?           A. Yes. [176]



(Testimony of Don A. McCoy)

Q. And when that vehicle collided with the front part of your truck, it was headed in from a southwesterly direction, wasn't it? A. Yes.

Q. With its left side away from your vehicle; in other words, the left—

A. Yes.

Q. —when it struck the front of your vehicle, that left rear fender that shows damaged in that picture was clear on the opposite side of the vehicle from you, wasn't it?

A. Yes, sir. Have you the front picture there, Judge?

The Court: The front picture. There is a front picture of the Ford. That is Exhibit 9. Here is the front picture of the station wagon, 5.

The Witness: I never saw that one. I never did look at it, your Honor.

The Court: Oh, you didn't even go to look at the station wagon?

The Witness: No. I was having enough trouble with my insides without looking at any more.

Q. By Mr. McKnight: Now, you say that you saw some paint on the left rear corner in the vicinity of that damage, is that right? [177] A. Yes.

Q. And that appeared to you to be a rather cream color? A. Yes.

Q. Could you tell from looking at it whether it was paint brought onto it from another source or whether it was the undercoating on the vehicle itself?

A. No. I am not an authority on paint, so I did not determine.

(Testimony of Don A. McCoy)

Q. You didn't tell that. You just saw some light-colored— A. Cream-colored paint, yes, sir.

Q. —paint or marks? A. Yes, sir.

Q. In the vicinity where the damage was done?

A. Yes, sir.

Q. You haven't any idea how it got on there?

A. No, sir.

Q. You don't know whether it was undercoating, or what?

The Court: He says he hasn't any idea.

Mr. McKnight: All right.

The Court: So if he hasn't any idea, he doesn't know anything else.

Mr. McKnight: That is all right, your Honor. [178]

Mr. Deutz: Just a moment. Counsel, you have been quoting this section from that statement to the effect that the cars became bunched together. I haven't been able to find that.

Mr. McKnight: It is on the last page, right at the top of page 15.

Mr. Deutz: Page 15.

Mr. McKnight: Beginning at line 2—beginning at line 1, as a matter of fact, on page 15.

Mr. Deutz: May I see that, please?

All right; that is all.

Mr. McKnight: That is all, Mr. McCoy. Thank you.

Mr. Badostain.

PETER BADOSTAIN,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Peter Badostain.

The Clerk: And your address?

The Witness: 3088 Chadwick Drive, Los Angeles.

Direct Examination

By Mr. McKnight:

Q. Were you riding in one of these vehicles when this [179] accident happened?

A. In the Ford sedan.

Q. That is Mr. Uarte's automobile?

A. Yes, sir.

Q. Is Mr. Uarte a relation of yours?

A. A cousin of mine.

The Court: Mr. Deming, I think they wanted to ask you another question before you leave.

Officer Deming: I will be right back, your Honor.

The Court: Oh, all right. I thought you were leaving.

Q. By Mr. McKnight: Who else was in the car?

A. Mr. Layana and Mr. Uarte.

Q. And Mr. Uarte? A. And Mr. Uarte.

Q. Who was driving?

A. Mr. Uarte was driving.

Q. Whose automobile was it? A. Mr. Uarte's.

Q. Where had you, Mr. Layana and Mr. Uarte been?

A. We had been on a vacation, clean up to Elko, Nevada, and were on our way back.

(Testimony of Peter Badostain)

Q. And this was on what day of the vacation, seventh, eighth or ninth?

A. It was around the seventh or eighth day. I forget [180] now. We were on our way back, going home.

Q. Where had you come from that day?

A. If I remember correctly, Antelope, the town of Antelope.

Q. You had started your trip south from Antelope?

A. Yes, that night—that afternoon.

Q. About what time did you start from Antelope?

A. Well, if I remember right, it was about 5:00 o'clock in the afternoon.

The Court: Where is this Antelope?

The Witness: It is 15 or 16 miles north of Sacramento.

Q. By Mr. McKnight: How far from the place where the accident happened?

A. Approximately 165 miles.

Q. And what had you been doing just prior to starting, during that day?

A. Well, we had our dinner and was laying around until it got cooled off a little bit so we could start.

Q. Did any of you take a sleep during the afternoon?

A. We all did.

Q. You all did. You started around about what time?

A. Around about 5:00 o'clock in the afternoon.

Q. Throughout this trip, who had been driving?

A. Well, we took turns.

Q. Who started at Antelope? [181]

A. I started at Antelope and drove down to Merced.

(Testimony of Peter Badostain)

Q. And what did you do at Merced?

A. At Merced we stopped, had a bite to eat, had a tire fixed, and we started out.

The Court: What time was it?

The Witness: I don't remember what that second time was.

Q. By Mr. McKnight: Do you have any memory of the time you were at Merced?

A. I don't remember, to tell you the truth.

Q. You don't remember?

The Court: Was it dark?

The Witness: Oh, it was at night.

Q. By Mr. McKnight: And had any of you, to your knowledge, had any intoxicating liquor or anything of that kind with your dinner that night?

A. Well, just before we laid down there, we brought out a quart of beer and the four of us had a glass of beer apiece.

The Court: That was in the afternoon?

The Witness: That was in the afternoon.

Q. By Mr. McKnight: That was before you left Antelope? A. Yes.

Q. Had any of you had anything since then? [182]

A. Absolutely not.

Q. Had you had anything else except this one bottle between you? A. No, sir.

Mr. McKnight: That was a surprise to me.

The Court: What?

Mr. McKnight: The bottle of beer.

The Court: You mean you were surprised?

(Testimony of Peter Badostain)

Mr. McKnight: No, I didn't know about it. That is why I asked another question, "At Antelope"—

The Court: That is one of the things that men go on a trip for.

Mr. McKnight: Yes, I realized that, your Honor. I might have known, your Honor, but it just never occurred to me.

Q. When you left Merced, after having something to eat, who started driving? A. Mr. Uarte did.

Q. And when you left Merced, was it raining?

A. No, it wasn't.

Q. When you left Merced, was the pavement wet?

A. No; it was dry.

Q. And what did you do?

A. I got in the back seat and went to sleep.

Q. Did you go to sleep immediately after you left [183] Merced? A. Well, as far as I remember, yes.

Q. And up to the time you went to sleep, did the pavement continue dry?

A. As far as I remember. I didn't wake up until the accident.

Q. And the last that you remember, will you state approximately how fast Mr. Uarte was driving?

A. Well, we made it a habit of going around 50 miles an hour.

Q. Is that the speed that he was driving?

A. Approximately.

Q. When you went to sleep?

A. I didn't go up and look. I laid down in the back seat.

Q. And at that time the pavement was dry?

A. The pavement was dry.

(Testimony of Peter Badostain)

Q. What was the next thing you remember about the accident?

A. The next thing I remember about the accident was the bump.

Q. The crash?

A. The crash, and then we went over some place else and I don't know what happened after that.

Q. Do you remember anything about the accident except [184] you woke up with the crash?

A. I woke up with the crash; we stopped and they hollered at me to see if I was all right, and I got out.

Q. Did you see or feel more than one crash?

A. I don't remember whether I did or not.

Q. You don't know?                      A. I don't know.

Q. You don't know.

The Court: Were you injured?

The Witness: No, I was not.

Q. By Mr. McKnight: When Mr. Uarte's car stopped, what did you do?

A. Well, I jumped out and started looking for Uarte.

Q. And did you find him?

A. Well, not right away. I had my shoes off and I went back in the car and got my shoes and got the flash-light, because it was awfully dark and it was raining at the time.

The Court: Uarte was not in the car?

The Witness: No, he was not.

Q. By Mr. McKnight: And where did you find him?

A. Out in the center of the street.

Q. On the pavement?

A. Between our car and the truck on the pavement.

The Court: On the pavement?

The Witness: On the pavement, yes, sir. [185]



(Testimony of Peter Badostain)

Q. By Mr. McKnight: What condition was he in?

A. Well, I thought he was dead, and so did everybody else. He was just lying there still.

Q. Did he try to get up and move?

A. After a few seconds, he tried to get up.

Q. You don't know whether or not he had crawled a little bit or not before you got to him?

A. No, I don't.

Q. You just found him there?

A. I just found him there.

Q. From then on, you took care of him?

A. From then on, I stayed right with him.

Q. Do you know anything about this accident that you haven't told us? A. That is all.

Mr. McKnight: That is all.

Cross-Examination

By Mr. Deutz:

Q. I believe you testified you woke up at the time of the impact with the truck? A. Yes.

Q. You were not awake at any time prior to the actual impact? A. Absolutely not. [186]

Q. Prior to the actual impact, did you feel any bump or anything behind you? A. No, I didn't.

Mr. Deutz: That is all.

The Court: Step down. The next witness.

Mr. McKnight: Mr. Layana.

Mr. Deutz: Oh, I would like to ask one more question, please.

The Court: All right.

Q. By Mr. Deutz: At Merced did you have anything done in regard to the tires of the car?

A. No—At Merced, yes, we fixed one flat tire.

(Testimony of Peter Badostain)

Q. You fixed a spare tire?

A. Well, a spare tire.

The Court: A spare?

The Witness: Yes.

The Court: All the other tires were good?

The Witness: Absolutely.

Q. By Mr. Deutz: Did you examine all the other tires?

A. Well, they were all good tires when we left Los Angeles on the trip.

Q. What condition were they in?

A. They were in fairly good condition.

Q. Did they have any tread on them?

A. Yes, they did. [187]

Q. They were not slick?

A. Not to my knowledge, they weren't, no.

Q. Then, you could see a visible, clear tread on the tires?

A. Well, I don't remember, to tell you the truth, right now.

Mr. Deutz: That is all.

#### Redirect Examination

By Mr. McKnight:

Q. Did you have any feeling, do you remember, of considering those tires to have been in bad shape, or anything of the kind?

A. No, no. They were in good shape when we left.

Mr. McKnight: That is all.

The Witness: We wouldn't go clean to Elko on bum tires on a trip.

The Court: All right.

Mr. McKnight: Mr. Layana.

CEFERNEO LAYANA,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, testified as follows:

The Clerk: What is your full name?

The Witness: Ceferneo Layana. [188]

The Clerk: What is your address?

The Witness: 2725 Ohio Avenue, South Gate.

Direct Examination

By Mr. McKnight:

Q. Mr. Layana, do you remember leaving Merced that night? A. Yes, sir.

Q. Who was driving when you left Merced?

A. Mr. Uarte.

Q. And where were you sitting after you left Merced?

A. I was sitting in the front seat.

Q. And what did you do, what did you proceed to do, if anything? A. Sleep.

Q. You went to sleep. Before you went to sleep, was the road wet or dry? A. It was dry.

Q. At that time approximately how fast was Mr. Uarte driving?

A. He was going between 45 and 50.

Q. And after you began to doze, did you know how fast he was traveling?

A. I didn't pay any attention to that.

Q. Did you realize that it was raining up until the [189] accident?

A. Yes, a couple of different times I waked up and knew it was raining, but he was driving so it didn't mean anything to me, so I went back to sleep.

Q. You were still half asleep? A. Yes.

(Testimony of Ceferneo Layana)

Q. All right. What was the first thing you knew with reference to this accident?

A. The first thing we knew, we were going right along when something suddenly woke me up. I don't know what.

Q. And do you know what woke you up?

A. I don't know what.

Q. You don't know whether it was a bang, a jar or jerk, what it was?

A. Well, kind of a jerk or something, and when I woke up, there were two lights right in front of us.

Q. Then what happened?

A. I just put my elbow up and by that time we were hit.

Mr. McKnight: That is all.

The Court: Cross-examine. Were you hurt?

The Witness: I only had a little bruise on my shoulder. [190]

### Cross-Examination

By Mr. Deutz:

Q. Mr. Layana, I believe you just testified that you felt a bump or something, is that correct?

A. It was something. I couldn't tell what it was.

The Court: He said a jerk or something.

The Witness: A jerk or something.

Q. By Mr. Deutz: You felt a jerk or something. Do you remember Mr. Walter Chandler interrogating you on the night of the accident and asking you certain questions? A. Yes, sir.

Q. And do you remember Mrs. Maude Cook taking down those statements at the time, the lady sitting back there in the blue coat?

(Testimony of Ceferneo Layana)

Mr. McKnight: It is stipulated that this is an authentic record.

The Witness: There was some lady there. I don't just remember who it was right now.

Mr. Deutz: I see.

Q. Do you recall this question being asked you at that time:

"Do you remember of hitting any one, or colliding with anything before you hit the big milk truck?"

And you answered,

"I don't remember it."

Mr. McKnight: Now, if this is intended to be impeach- [191] ment, I object to it because it is not the slightest impeaching, your Honor.

The Court: Well, from his statement that he felt a jerk or something and from the testimony of the driver of the truck before, I have no doubt but what you will argue that I should infer that the driver of the station wagon clipped him, clipped the driver of this car.

Mr. McKnight: Yes, your Honor, but there is nothing in his statement that is contrary to what he has testified to. That is my point. He does not remember it. He didn't testify he remembered hitting anything.

The Court: The objection is overruled. It all goes to something—It is admissible. He had answered it, hadn't he?

The Witness: Yes, that is correct.

Mr. Deutz: Just a moment, please. That is all.

Mr. McKnight: That is all, Mr. Layana.

The Court: He may be excused. Next witness.

Mr. McKnight: Just a moment, if your Honor please. Mr. Deming, will you take the witness stand? [192]

## LAWRENCE DEMING,

recalled as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. McKnight:

Q. Mr. Deming, you have stated that you found the body of one of the Navy men beneath the wheels of the trailer, was it?      A. That is right.

Q. Of the trailer as shown in one of the photographs here?      A. That is right.

Q. Where did you find the body of the other Navy man?

A. The other Navy man was in the southbound lane, between the station wagon and the right side of the trailer.

Q. On the pavement?

A. Just about halfway between; on the pavement.

The Court: And where did you find Mr. Uarte?

The Witness: He was to the south of the trailer, I would say.

The Court: On the pavement?

The Witness: Yes, in the southbound lane.

The Court: About how far between the trailer—

The Witness: He was approximately 20 or 30 feet ahead [193] of the trailer, I believe.

The Court: Ahead of this car?

The Witness: No. He was ahead of the trailer.

The Court: Well, the trailer was headed south and he was headed northerly; in other words, he was about half-way between the trailer—

The Witness: That is right.

The Court: —and his own car?

(Testimony of Lawrence Deming)

The Witness: That is right.

The Court: On the pavement?

The Witness: On the pavement.

Mr. McKnight: That is all.

The Court: All right. Cross-examine.

Mr. Deutz: Just a moment, please.

Cross-Examination

By Mr. Deutz:

Q. Officer, I would like to ask you—I will show you first—

The Court: Exhibit 14.

Q. By Mr. Deutz: —Exhibit 14, the plaintiff's, and I will ask you if in regard to positions marked on this map or on this diagram you can identify the positions of the respective bodies of the deceased and injured parties in this accident? [194]

A. I think I can.

The Court: Did you ever see that diagram before?

The Witness: Yes, I believe I did, your Honor.

Q. By Mr. Deutz: I believe you testified at the trial at Madera?

A. Yes, sir, I did.

Q. At that time you were aware of the fact that they had a blackboard that was used at that time?

A. Yes.

Q. And this is a photostatic copy of that blackboard. It has already been so stipulated.

A. Yes.

Mr. Deutz: I wonder if in this position now you can show the relative positions of the bodies? There are some positions taken as P-1, 2 and 3. If those coincide with your views on the subject, will you identify the positions and whose bodies are there?



(Testimony of Lawrence Deming)

Mr. McKnight: To which we object on the ground that those were not placed there by the witness. He can place them, if he remembers.

The Court: They were not placed there by the witness, nor is that photograph in evidence. Of course, you can lay a foundation for it and put it in evidence. Have you the one that is in evidence, Mr. Clerk, Exhibit 13?

Mr. Deutz: 13. [195]

The Clerk: That was a two-sheet diagram in evidence.

Mr. Deutz: I have it here.

The Court: Oh, all right.

Mr. Deutz: Now, 13, we can ask you to testify on the basis of No. 13 and show the relative positions of the bodies in this case.

The Court: Can you see this, Mr. McKnight?

Mr. McKnight: Yes.

The Witness: I would place Mr. Uarte's somewhere in here (indicating).

Q. By Mr. Deutz: Now, that is on the southbound lane? A. The southbound lane.

Q. Directly opposite the tractor and about how far in from the edge of the pavement?

A. I think it was, as near as I can remember, he was in the center of the pavement.

Q. He was in the center?

A. Between the white line and the west shoulder, the pavement edge.

Q. Halfway between the outer edge of the shoulder and the white line dividing the center of the highway?

A. Well, he was between the white line and the west pavement edge.

Q. Oh, where the—

A. Where the— [196]

(Testimony of Lawrence Deming)

Q. Where the shoulder began?

A. Where the shoulder begins.

Mr. Deutz: I see.

The Court: Was he about opposite the head of the tractor?

The Witness: No, sir. As close as I can recollect, he was just about opposite, east of the tractor.

Q. By Mr. Deutz: Directly east of the body of the tractor?

The Court: And the other body lie about halfway between the station wagon—

The Witness: That is right.

The Court: —and the trailer, as you have indicated on this exhibit?

The Witness: That is right.

Q. By Mr. Deutz: And the sailor's body?

A. Was underneath the left rear duals—rather, his head was facing east.

The Court: Well, it was in the position shown in the photograph?

The Witness: That is right. That is the way it was.

Q. By Mr. Deutz: Did you have occasion to examine the vehicles at the scene of the accident, specifically?

A. Not too closely.

Q. Did you examine Mr. Uarte's vehicle? [197]

A. I kicked the tires, also, on it.

Q. What did you discover in regard to the tires on Mr. Uarte's vehicle?

A. That the left rear tire and the right front tire were flat.

Q. The left rear and the right front were both flat?

A. That is right.

(Testimony of Lawrence Deming)

Q. On the right front tire, was there any indication that it had been gouged by anything, or that it had become flat in anything other than the normal course of events?      A. To my knowledge, I don't remember.

Q. There was no portion of the vehicle sticking into the tire or anything crashed against it?

A. I don't remember that.

Mr. Deutz: That is all.

### Redirect Examination

By Mr. McKnight:

Q. You know that Mr. Uarte was not dead, don't you?

A. That is right.

Q. Do you have any way of knowing whether he had crawled or worked himself into a position on the highway different than from that in which he originally lay when he hit the pavement?

A. When I first saw him, as best as I can remember, he [198] was lying there covered up with some coat or something from one of the cars.

Q. You don't know whether or not he had crawled on the highway or not, before anyone got to him?

A. No, I don't.

The Court: You have had experience with blowouts and skids?

The Witness: Only one blowout before.

The Court: I mean on other cars?

The Witness: Yes, I have seen other cars.

The Court: Will they blow as they are skidding without leaving any particular marks on the tire?

The Witness: Well, it blows out.

(Testimony of Lawrence Deming)

The Court: In other words, a car can skid and the tire won't explode, but it will go flat and the air will blow out of it?

The Witness: Yes.

The Court: That is all.

Mr. McKnight: That is all.

The Court: The witness may be excused. Is that your case except for the medical testimony?

Mr. McKnight: Well, except that Mr. Uarte has not been cross-examined.

The Court: Oh, I forgot all about that. And I have one or two other questions to ask him. Will you take the [199] stand again, Mr. Uarte?

ERNEST JOHN UARTE,

the plaintiff herein, called as a witness on his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. McKnight:

Q. Mr. Uarte, I think I asked you when you were on the stand before about your present condition in reference to your chest, and you described your present condition in that connection.

What about your leg at the present time?

A. It is still weak.

Q. Are you able to walk distances, long distances, on it, or to use it to exert very much with it?

A. No, I am not. I can't run at all, and I can't walk too far. It tires out on me.

(Testimony of Ernest John Uarte)

Q. Did you have any particular form of exercise that you were performing before this accident happened?

A. Yes. I used to play handball quite a bit, and I used to play golf.

Q. Have you been able to play either since the accident? [200]

A. No, I haven't.

Q. Do you feel that you are able to play either now?

A. No. The doctor told me that I should never play handball again.

Q. And what about golf; do you feel that you could last 18 holes in it?

A. Oh, no, I know I couldn't.

Q. All right. Now, do you remember—We were not able to stipulate on this, your Honor, so I have to go into it—

The Court: Oh, on the matter of doctor bills?

Mr. McKnight: Yes, your Honor. We do not have our receipted bills. I am trying to get them from the doctor. I hope to be successful. But Mr. Uarte did not bring those with him, and so he has to testify from his memory, and counsel didn't feel justified in accepting that.

The Court: O.K.

Q. By Mr. McKnight: Will you state to the Court the amount of your hospital bills at the Dearborn Hospital, if you remember the amount?

A. The doctor bill was \$500.00.

Q. The doctor bill was \$500.00?

A. Yes.

Q. Was that paid?

A. Yes, that was paid. I paid that. [201]

Q. And the hospital bill was how much?

A. The hospital bill was around fifteen hundred, I think it was fourteen hundred and ninety something.

(Testimony of Ernest John Uarte)

Q. To refresh your memory, was it \$1,491.25?

A. That is right; that is it.

Q. And what did you pay for your special nurse before your sister and mother took charge?

A. I think I had a special nurse for two days or three days. I think it was around \$30.00.

Mr. McKnight: \$30.00. That is all.

The Court: Cross-examine.

Mr. Deutz: Your Honor, I move that this testimony on damages be stricken; that either the receipted bills or the statements from the persons who received payment would be the best evidence.

Mr. McKnight: I can't see that it is the best evidence.

The Court: Motion denied. All that is is corroborative. He can testify to it all right, that that is what he paid.

Mr. McKnight: He doesn't have to have a receipted bill to show he paid it.

The Witness: I paid it, your Honor.

Cross-Examination

By Mr. Deutz:

Q. Now, Mr. Uarte, I believe you testified you were in [202] the armed services, is that right?

A. Yes, sir.

Q. And in what branch of the armed forces?

A. I was in the Army, sir.

Q. And you served in the European theatre?

A. Yes, sir

Q. What particular branch of it?

A. I was in the Counter Intelligence. I was with the screening headquarters.

(Testimony of Ernest John Uarte)

Q. Were you injured at any time overseas?

A. No, sir.

Q. The automobile that was damaged in this accident, that was a 1941 Ford?      A. A 1941, yes, sir.

Q. And where did you buy that?

A. I bought it in Los Angeles.

Q. Do you remember what you paid for it?

A. No, I don't.

Q. Do you remember who you bought it from?

A. I know where the dealer is located, but I don't remember his name.

Q. Where was the dealer located?

A. East Los Angeles, on Whittier Boulevard.

Q. And when did you buy that car?

A. In 1941. [203]

Q. In 1941?      A. Yes, sir.

Q. You bought the car before the war?

A. Yes, sir.

Q. I see. Now, did you read the complaint in this action before it was filed?

A. You mean—I don't remember whether I did or not. I have read so many—

Q. Mr. McKnight filed a typewritten complaint in this action.

The Court: Do you want the file, the original?

Q. By Mr. Deutz: Mr. McKnight prepared this complaint, I presume. Did you read this complaint before it was filed?

A. That I don't remember. As I said, I have read so many complaints, I don't know which I have read.



(Testimony of Ernest John Uarte)

Mr. McKnight: Do you want me to answer that, counsel? I can.

Mr. Deutz: Well, I will let you stipulate in a moment. I want to ask a question right now.

Q. You say you have read so many complaints. How many complaints have actually been filed in cases involving this accident?

Mr. McKnight: To which we object as immaterial, if your Honor please. [204]

The Court: Objection sustained.

Q. By Mr. McKnight: I call your attention to Paragraph VI of the plaintiff's complaint on file in this action and ask you in regard to the quoted language and I will quote the language, as follows:

"That on or about July 24, 1946, on U. S. Highway No. 99, approximately two miles north of the City of Madera, County of Madera, State of California, said Richard Francis Rogers and said Roger Davis Green negligently drove, operated and used said Ford station wagon, and defendant Don Arthur McCoy negligently drove, operated and used said tractor and semi-trailer, and thereby caused said Ford station wagon to collide with a Ford sedan automobile owned and driven by plaintiff, and caused said Ford sedan automobile to come into collision with said tractor and semi-trailer, injuring and damaging plaintiff and his said Ford sedan automobile as is hereinafter described."

Now, that statement or that paragraph of your complaint, do you remember reading that?

A. No, I don't.

(Testimony of Ernest John Uarte)

Q. Do you remember giving that information to Mr. McKnight on which he based that statement?

A. I gave him some information; I don't know whether those words or not. [205]

Q. Did you tell Mr. McKnight that you were struck by the Navy station wagon?

A. I don't remember whether I did or not.

Q. Do you have any idea how Mr. McKnight, filing this complaint in your name, happened to have that information in his complaint?

A. I don't. I might have given it to him. I don't remember. My memory isn't any too good yet.

The Court: Before Mr. McKnight filed it, you told him everything that you remembered about the accident, didn't you?

The Witness: Yes, your Honor.

The Court: Did you dictate that complaint?

The Witness: I don't know, your Honor.

The Court: Well, did you dictate it to a stenographer?

The Witness: I don't believe so, your Honor.

Q. By Mr. Deutz: Mr. Uarte, what was the condition of the tires on your car?

A. I don't remember.

Q. Do you know? You wouldn't know whether they were in good condition, they were new or old?

A. I don't remember leaving home, so I don't know what condition.

Q. You don't remember leaving home?

A. No, sir. [206]

Q. Mr. Uarte, have you been paid any compensation on any claim involved in this case.

(Testimony of Ernest John Uarte)

Mr. McKnight: To which we object on the grounds it is incompetent, irrelevant, and immaterial, not within any issue of the case, not effective on the issue of damages in any way, whether or not he did. The fact is, in California, in the case of Lomey vs. The Interstate Transit Company, the citation of which I do not remember, a question of that type in reference to an automobile damage case was held to be prejudicial error which resulted in a reversal of the case.

Mr. Deutz: I imagine that was a jury trial.

Mr. McKnight: It was a jury trial. I don't suppose it is prejudicial error in this case.

The Court: I imagine that is immaterial. He is suing for damages here and whatever the rights or liabilities that third parties might have—

Objection sustained. I can't see how, even if the Golden State Milk Company paid him money, it would seem to me that it would be wholly immaterial, because under the law people have a right to make a settlement of a claim in order to merely avoid the issue of litigation, if they wish.

Mr. McKnight: May the record just show that there was no such settlement made, however. That is right.

The Court: Well, I was just trying to resolve in my mind— [207]

Mr. Deutz: There is no proof on that point, your Honor.

The Court: —all of the possible contingencies that might be developed by the question, in order that I might rule, and that seemed to be one of them.

Mr. McKnight: I understand, your Honor.

(Testimony of Ernest John Uarte)

Q. By Mr. Deutz: What were your duties at the Bank of America, Downey Branch?

A. I was G.I. coster. I had charge of the Veteran Home Loans.

Q. How long had you been in that particular specialty at the bank?

A. I believe I had—It was around the first of 1946 that we inaugurated that department, and I believe I took it over.

Q. And you took charge of that?

A. Yes; I was the first man to take charge of it.

Q. What were your duties in that line?

A. In that line I made the home loans to the veterans.

Q. Did you make a number of loans for the veterans there?

A. I guess I did. I don't remember how many I made, but then we have quite a few there. In fact, we have a lot of them.

Q. And you started, that department was opened in 1946, wasn't it?      A. Yes. [208]

Q. What was your salary at that time?

A. I think it was either two hundred and seventy or two hundred and seventy-five.

Q. Two hundred and seventy or two hundred and seventy-five, in 1946?      A. Yes.

Q. Did you receive any raises after that?

A. That two hundred and seventy—

Q. Prior to the accident?

A. That two hundred and seventy includes a blanket raise that we received in, I think it was June. Before that, I do not remember what I was making, but we did receive a blanket raise, I believe, I don't know when it was, June or July.

(Testimony of Ernest John Uarte)

Q. June or July of 1946?

A. I do not remember when it was.

Q. Did your duties change any during that period?

A. Well, I don't remember.

Q. But you were handling G.I. loans?

A. Yes, I think I was. In fact, that is what they—

Q. You are not so sure, now?

A. Well, I don't remember what I was doing. I was making G.I. loans.

Q. You are losing your memory for this—

Mr. McKnight: Let him finish. [209]

Mr. Deutz: Go ahead.

Mr. McKnight: Explain what you were going to say.

The Witness: When I went back, they told me they was giving me my old job back, making veteran loans. Now, as far as making the loans, actually making the loans, I don't remember.

Q. By Mr. Deutz: When you went back to your job after the accident, you stated you had to be specially trained for that job again, because you had forgotten everything that happened before the accident?

A. Yes.

Q. How long did they train you to take over that job again?

A. The man that took my place when I was on vacation, he was with me, oh, I don't know how long, a couple of months or so, and then he went back to escrows, and whenever I needed any help, I would go back to him.

Q. In that two months' time you took over the G.I. loan section again and were in position to handle it entirely by yourself?

A. Well, no; I still needed help.

(Testimony of Ernest John Uarte)

Q. But you didn't have any previous experience to draw on?

A. Well, it came back to me. When I started working there, it seemed to come back, but I still needed assistance. [210]

Q. But as you began doing the work again, being the duties you were performing prior to the accident—

A. My duties came back to me. Whether it came back as a recollection or not, I don't know.

Q. Did anything else come back to you about what had happened prior to that accident, excepting your duties?

A. No, sir. I do not have any recollection of when I left here, what I did, or anything.

Q. You have no recollection of leaving Sacramento?

A. No, sir.

Q. No recollection of driving down the highway?

A. No, sir.

Q. No recollection of a collision or impact?

A. No, sir.

Q. Or injury or anything of the sort?

A. No, sir.

Q. Now, on August 5, 1946, a Mr. Walter Chandler, Assistant District Attorney, Madera County, and Mrs. Maude Cook, the reporter there, visited you at the Dearborn Hospital in Madera. Do you have any recollection of that visit?      A. No, sir.

Q. No recollection whatever?      A. No, sir.

Q. You have no recollection of anyone speaking to you [211] about anything in connection with this case, at the hospital, while you were there?      A. No, sir.

Q. Have you ever seen Mrs. Maude Cook before today?      A. No, sir. Who is she?

(Testimony of Ernest John Uarte)

Q. She is the lady in the blue coat here. Would you stand up, Mrs. Cook? Over there (indicating)?

A. No, sir.

Q. And I believe you testified that you have no recollection of anything prior to the latter part of August, 1946, is that correct?

A. That is right, sir.

Mr. Deutz: Just a moment.

Q. I believe you testified that your leg was in a traction splint or a brace, and that you were using crutches from the time that you were discharged from the hospital until Mother's Day of 1947?

A. Yes, sir. That is when I took my brace off.

Q. In other words, that was approximately nine months from the time of the injury?

A. I presume so, yes, sir.

Q. And in nine months the injury to your leg—that was the femur that was injured, wasn't it, the upper bone in the leg?

A. Yes, sir. [212]

Q. —that bone had not healed in that period?

A. It had healed, but the doctor told me to watch it, there was a chance of rebreaking it.

Q. What type of fracture was it?

A. All I know is my leg was broken.

Mr. Deutz: Just a moment. I think that is all.

Redirect Examination

By Mr. McKnight:

Q. I forgot to ask you this, Mr. Uarte: After you left the Dearborn Hospital and went back south, did you



(Testimony of Ernest John Uarte)

have any physician in attendance or taking care of you after you got down there?

A. I went down to the Naval Hospital in Long Beach once a month for a physical checkup. They took x-rays of me down there.

Q. And they advised you and took care of your braces, and that kind of thing? A. Yes, sir.

Q. What about these braces—you said that you couldn't put them off and on and you needed assistance, when you were wearing them, and so forth; were they taken off and on every night, or what was the situation?

A. No. The brace was disconnected from my shoe. My shoe was taken off and my brace was loosened. It wasn't [213] taken off because the doctor told me that I should never take it off at night, due to the fact that the muscle would contract and rebreak the leg, there was danger of it.

Q. So you had to sleep and have that brace on 24 hours a day? A. Yes, sir.

Q. Was it heavy? A. It sure was.

Q. Was it comfortable? A. No, sir.

Mr. McKnight: That is all.

The Court: That is all.

Q. By Mr. McKnight: Were you at any expense while you were at the Naval Hospital in the south?

A. No, sir.

Q. That was service furnished by the government?

A. That is right.

The Court: If he was at no expense, the services were furnished to him. Step down.

Mr. McKnight: That is the plaintiff's case.

The Court: Except for the medical testimony?

Mr. McKnight: Except for the medical testimony, which we will ask the privilege of presenting when it seems best to hear it, your Honor.

The Court: All right. Proceed. [214]

Mr. Deutz: Well, your Honor, at this time the plaintiff has not rested his case due to the fact that the medical testimony has not been heard, but if the Court would consider the case otherwise determined or otherwise presented, as far as the negligence features are concerned, at this time I would like to make a motion that this action be dismissed on the ground that there is a total failure of proof that there was any negligence on the part of the government vehicle in this particular case.

The only straw that the plaintiff has in that connection is the inadvertent statement of Mr. McCoy made on the night of the accident where he said that something happened, the cars either bunched or skidded.

The Court: Under the rule, we can take these motions under submission and hear the rest of the testimony. So, in view of the fact that you have other witnesses here, I think we probably better proceed to dispose of the testimony, so that they will not be further inconvenienced, and I will take your motion under submission and dispose of it at the conclusion of the trial.

Mr. Deutz: Very well, your Honor.

The Court: Call your witnesses.

Mr. Deutz: I believe I will call Mrs. McCoy at this time. [215]

## DOROTHY McCOY,

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Dorothy McCoy.

The Clerk: And your address?

The Witness: 10942 Apricot Street, Oakland.

## Direct Examination

By Mr. Deutz:

Q. Now, Mrs. McCoy, are you the wife of Don McCoy, who previously testified in this case?

A. That is right.

Q. On July 24, 1946, when the accident in question occurred, were you riding with Mr. McCoy?

A. I was.

Q. Now, as Mr. McCoy has testified, you were north-bound from Los Angeles to Oakland, is that correct?

A. That is right.

Q. At what time had you left Los Angeles?

A. It might have been around about 3:00 o'clock in the afternoon.

Q. Around 3:00 in the afternoon?

A. Yes. [216]

Q. And had you stopped along the way?

A. Yes.

Q. Had you stopped for fuel or dinner?

A. Yes, we stopped for dinner, fuel, and we stopped and bought a milkshake.

Q. As you approached the scene of the accident, this was approximately 11:30 in the evening, do you recall seeing these particular cars approaching you from the opposite direction?      A. No, I don't.

(Testimony of Dorothy McCoy)

Q. Do you recall seeing their headlights at all?

A. Not until the car swerved across the road.

Q. Not until the car swerved across the road. At that time you saw a pair of headlights swerve toward you, is that correct?

A. That is correct.

Q. Did you see only one pair of headlights at that time or did you see more than one?

A. No; I only saw one.

Q. Did you see a pair of headlights behind the car that swerved?

A. I did not.

The Court: Were you sleeping?

The Witness: No, sir.

The Court: Had you been? [217]

The Witness: No, sir.

Q. By Mr. Deutz: Had you passed any other cars immediately prior to this accident?

A. No.

Q. And where was your husband's vehicle in relation to the road; was it in the northbound lane?

A. Yes, that is right.

Q. And in what relation to the center line?

A. I would say it was to the extreme right.

Q. To the extreme right. Was it on the shoulder?

A. No.

Q. Or was it on the pavement?

A. It wasn't on the shoulder.

Q. Or was it on the pavement?

A. It was on the pavement.

The Court: That is customary to drive there?

The Witness: Yes.

Q. By Mr. Deutz: At no time did you see two pairs of headlights coming towards you at once?

A. I did not.

(Testimony of Dorothy McCoy)

Q. Now, this car that was coming toward you, you say it swerved very suddenly?

A. Yes, it did.

Q. Approximately how far was it from you at the time it began to swerve? [218]

A. I would say about 50 feet.

Q. About 50 feet. What portion of the truck did that car hit when it first came in contact with it?

A. Well, it seemed to me that it hit toward the right.

Q. On the right? A. Yes.

Q. In front? A. Yes.

The Court: Your side?

The Witness: Yes, sir.

Q. By Mr. Deutz: Do you recall how many shocks or impacts that you felt?

A. There were several.

Q. You felt several? A. Yes.

Q. Was there a difference in intensity between the different blows?

A. It seemed that the first two were sharper than the others.

Q. The first two were sharper than the others, but there were at least more than two?

A. Yes, I think there were more than two.

Q. After this first car struck you, do you have any definite recollection of being struck by another car? [219]

A. No. I did not know whether it was another car or whether we had hit the same car again.

The Court: Twice?

The Witness: Yes, sir.

Mr. Deutz: That is all.

(Testimony of Dorothy McCoy)

Cross-Examination

By Mr. McKnight:

Q. Mrs. McCoy, your husband was driving, was he not?      A. That is right.

Q. You have driven with him many times, I take it?

A. Yes, I have.

Q. You have confidence in his driving, do you not?

A. Yes, I do.

Q. I assume you were not paying too much attention to other traffic until this thing all started?

A. No, sir; that is right.

Q. So the first thing that attracted your attention was when you saw a car swerve across suddenly in front of you?      A. That is right.

Q. What was on the highway before that time you just weren't paying any attention to?      A. No, sir.

Mr. McKnight: That is all. [220]

The Court: Step down. The next witness.

Mr. Deutz: Sergeant Gill, please.

CLARK K. GILL,

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: The first name is Clark; the middle initial is "K"; the last name is Gill.

The Clerk: And your address, please?

The Witness: 124 South "I" Street, City of Madera.

The Clerk: "I" or "High"?

The Witness: "I."

Mr. Deutz: Where are those photographs?

The Court: Here they are.

(Testimony of Clark K. Gill)

Direct Examination

By Mr. Deutz:

Q. Sergeant Gill, I will show you a series of photographs marked Exhibits 2 through 12, inclusive, and I will ask you if you took those particular photographs?

The Court: Is there any question about it?

(Witness examines photographs.)

Mr. McKnight: He took them all but one, your Honor. [221]

The Witness: Some of these I didn't take, your Honor.

The Court: That is Plaintiff's Exhibit 2.

Mr. McKnight: All except one, all except Plaintiff's Exhibit 2.

The Witness: Except this one.

The Court: All but the daylight picture of the station wagon?

The Witness: That is correct; yes, sir.

The Court: All right.

Q. By Mr. Deutz: Now, Sergeant Gill, you have heard Officer Deming's statement as to the relative positions of the vehicles and the relative positions of the bodies in this particular case. From your examination of the scene of the accident, would your statement as to those positions be any different than Officer Deming's?

The Court: As demonstrated here by Exhibit 13? Do you have the original there some place?

Mr. Deutz: I have it here. Exhibit No.—No, this is No.—

The Court: No, it is a two-sheet affair.

Mr. Deutz: I have only one part of Exhibit No. 13.



(Testimony of Clark K. Gill)

The Witness: Here is a part here that you may be looking for.

The Court: They probably ought to be clipped together, Mr. Clerk. [222]

The Clerk: Yes, your Honor.

The Court: You have examined that?

The Witness: Yes. My testimony would be the same, your Honor, with the exception of the bodies.

Q. By Mr. Deutz: It is not in what particular—Now, for the purposes of the record, what time did you arrive at the scene of this accident?

A. I received the call at 11:55 from the Sheriff's office. We picked up Mr. Chandler and Mrs. Cook or phoned them at 11:56. At 12:10 the next day, Thursday, the 25th, we arrived at the scene of the accident that day, the Assistant District Attorney, Mrs. Cook and ourselves.

Q. And at that time you found the positions of the vehicles approximately as set forth on Exhibit 13?

A. Yes, sir.

Q. And at that time you noticed the positions of the bodies?

A. When I arrived there, the injured had all been removed. The only body I saw was the body of an enlisted man under the right rear duals, the right—the left rear duals of this trailer that was crosswise on the road, with the rear axle on the white line, whom at 2:10 that morning I learned from the coroner was identified as a Mr. Rogers.

Q. In what respects in that regard would your testimony differ from Officer Deming's? Did you state there [223] would be any difference on that?

A. No. The fact I had no knowledge of the other bodies.

(Testimony of Clark K. Gill)

Q. Of the other bodies?

A. I had no knowledge of the other bodies at all.

Q. Did you make an examination of the vehicles at that time?

A. Yes, we made an examination of the vehicles.

Q. Did you notice or did you examine Mr. Uarte's vehicle?      A. Yes.

Q. Did you notice the condition of the tires on that vehicle?

A. Yes; I believe a couple of them were not in any too good shape. Which two they were, though, I don't remember.

Q. Just what do you mean by not being in too good shape?

A. Well, didn't have too much tread. There were no bald spots on them, but a couple of them were pretty worn off.

Q. Were they slick?

A. No; they weren't exactly slick.

Q. A very faint tread on them?

A. I believe two. [224]

Q. Do you have any recollection as to the other two tires?      A. No.

Q. Just two that you particularly noticed as being poor?

A. I just have a hazy recollection that two of them were poor.

Mr. McKnight: Just a moment. He didn't say they were poor.

Mr. Deutz: Would you say in your estimate, from your experience in driving vehicles and observing tires, were these tires good or poor?

(Testimony of Clark K. Gill)

The Court: "Poor" is too relative a term. I think he said they were not in too good condition.

Q. By Mr. Deutz: Was there very much gripping surface left on the tires?

Q. Yes, the tires were fair. I wouldn't say they were real poor or they were real good; they were fair.

Q. Sergeant Gill, in your opinion, if an automobile is driven at approximately 80 miles per hour on a slippery, slick road, how long would it take to decelerate that vehicle to approximately 40 miles per hour?

Mr. McKnight: To which we object on the grounds it calls for a conclusion and an opinion of the witness, and it is a question that is not the subject of expert testimony. [225]

The Court: I think, counsel, it all depends on the weight of the automobile and the circumstances, the make, whether it is a two-wheel brake, a four-wheel brake, manual brake, hydraulic brake, whether also somebody put on the emergency brake at the same time they put on the foot brake, and how much pressure they exercise when they put the brake on.

Mr. McKnight: And even with the same vehicle, it would act differently in every case.

Mr. Deutz: I would be willing to qualify this witness further.

The Court: I don't know whether it would or not, but it would act probably differently with every driver.

Mr. Deutz: I will withdraw the question.

Q. Sergeant Gill, how long have you been driving automobiles?

A. I really don't know when I started. I will start my 19th year next July with the California Highway Patrol.

(Testimony of Clark K. Gill)

Q. And you had been driving for some time prior to that time?

A. When I went to work, you had to have two years motorcycle experience and five years driving a car, before you could go to work.

Q. Have you driven automobiles, sedans, shall be say, on wet and slippery roads before? [226] A. Yes.

Q. And you have had experience in applying brakes on vehicles of that sort? A. Yes.

Q. I believe the Highway Patrol generally has certain charts for braking distances on vehicles with certain loads, is that correct?

A. Section 670 of the Vehicle Code sets out distances at speeds from 10 miles an hour, I believe, up through 45.

Mr. McKnight: On dry asphalt pavement?

The Witness: That is correct. That test must be given on dry pavement only.

Mr. Deutz: That, of course, is the prima facie standard as to braking power of certain vehicles?

Mr. McKnight: To which I object on the grounds it calls for a legal conclusion and is not a subject of expert testimony.

The Court: Yes.

Mr. McKnight: I don't see the materiality of braking power.

Mr. Deutz: There was testimony by a witness for the plaintiff that the Navy vehicle passed a certain truck at 80 miles an hour.

The Court: Passed him and pulled in between him and another [227]

Mr. Deutz: Yes, in a space of a few hundred feet, driving 80 miles an hour, he slowed down to 40 miles an hour.

(Testimony of Clark K. Gill)

The Court: No. He said the other truck was a hundred yards ahead.

Mr. Deutz: Yes, that is right; he said the other truck was a hundred yards ahead.

The Court: But they were at least going 40 miles an hour.

Mr. Deutz: That is right, they were at least going 40 miles an hour, and a car coming 80 miles an hour in order to fit in that space has to decelerate.

The Court: It is too speculative. You have to figure out how many miles an hour.

Mr. Deutz: His testimony is merely to show the impracticability of that witness' statement.

Mr. McKnight: That is a question for your Honor to determine.

The Court: Yes, I think it is. There are so many improbable things that can't happen in an automobile accident. Objection sustained.

Mr. Deutz: Very well.

Q. I asked you previously about the tire of Mr. Uarte's vehicle. Did you notice which tires were flat?

A. Sir? [228]

Q. Did you notice which tires were flat?

A. When I arrived, the right front and the left front tires.

Mr. McKnight: And the left front?

The Witness: What did I say? The left rear tire; the right front and left rear.

Q. By Mr. Deutz: The right front and the left rear?

A. That is right.

Q. Did you notice the left rear fender of Mr. Uarte's car?

A. I noticed it to the extent it had been damaged, yes.

(Testimony of Clark K. Gill)

Q. Did you notice any paint marks on that at the time, or did you examine them for paint marks?

A. No. At that time we didn't. We did not examine them very closely at that time. We had quite a few traffic problems and difficulties there getting things straightened out. The towing cars were coming up. It was raining. We had a lot of outfits going through tied up. And, in fact, we held them up about 15 minutes and got the pictures and got through as quick as we could.

Q. On the rear end of the outfit, the semi-trailer, did you notice any damage to the right rear of that body of that trailer?

A. Yes, there was a scratch on the right rear side.

Q. It was a fairly heavy scratch? [229]

A. Oh, yes.

The Court: It was bumped, wasn't it, a dent?

The Witness: No. It was kind of a mark right along. It looked like something had scratched it. This is the mark here (indicating on photograph).

Q. By Mr. Deutz: I call your attention to Exhibit No. 10.

The Court: All right.

Q. Mr. Deutz (continuing): And you are pointing out the very rear of this truck here, a certain indentation.

The Court: No. He didn't point that out.

Q. By Mr. Deutz: Will you point it out?

The Court: He just pointed out the straight mark, the dark mark.

The Witness: This is the mark I pointed to (indicating on photograph). There was a slight damage in the bottom there.

The Court: A bump, a dent?



(Testimony of Clark K. Gill)

The Witness: That is right. And this here (indicating on photograph) was a rubbing disturbance of the paint there.

Q. By Mr. Deutz: The paint had been scratched at that point? A. That is right.

Q. I see. I call your attention to Exhibit 13 again, [230] on the first page of this exhibit, there are some gouge marks shown in the very southerly portion of the northbound lane, and I would ask you whether you noticed any gouge marks at that position on the night of the accident?

A. Are these the marks here (indicating on exhibit)?

Q. That is right.

A. Yes, the boys noticed that condition. I went down and looked at them.

Q. Did those gouge marks appear to be fresh?

A. At that time it was pretty hard to tell much about them. However, I was back there at 3:30 a. m., with Mr. Chandler, at which time the road had dried up considerably and the marks looked to me, I would say they were apparently fresh marks.

Mr. McKnight: Will you tell me which marks?

Mr. Deutz: The most southerly ones.

The Court: On the first page of Exhibit 13.

Mr. McKnight: Yes.

Q. By Mr. Deutz: On the second page of Exhibit 13 there are some gouge marks in the southbound lane, and I will ask you whether you noticed those gouge marks in the pavement?

A. I just got a rough look at them. All I done was take the pictures. Officer Pimley measured them. I could see the marks. There were marks there that night.



(Testimony of Clark K. Gill)

Q. Did those marks appear to be freshly made? [231]

A. They looked like it, yes.

Mr. Deutz: That is all.

### Cross-Examination

By Mr. McKnight:

Q. When you went back there at 3:30, there wasn't so much water on the road?

A. No. The road had dried up considerably. It had stopped raining, and shortly after I took the pictures, I went in and developed them and then come back to the scene of the accident.

Mr. Deutz: So you could get a better look at those gouge marks?

The Witness: That is right. Traffic had gone over and absorbed a lot of water.

Q. By Mr. McKnight: From your experience, you determined in your own opinion that those were fresh gouges?

A. I would say they were fresh. They hadn't been there for two or three days. They were fairly fresh.

The Court: How deep?

The Witness: I would say about a half inch, just roughly. We didn't measure them. I would say just roughly half an inch.

The Court: I see it is 5:00 o'clock and you have eight witnesses? [232]

Mr. Deutz: I have several witnesses.

The Court: How many more witnesses?

Mr. Deutz: I have four men from the Navy here.

The Court: Are they short or long witnesses?

Mr. Deutz: Mostly very short. I think possibly 10 or 15 minutes apiece.

The Court: Well, I think maybe if we come back at 7:00 o'clock, by that time you can have your doctor here.

Mr. McKnight: I will certainly try.

The Court: And thus we can conclude all the evidence in this case today.

Mr. Deutz: Well, all right. I have Mrs. Maude Cook here: I could use her for a short witness. It will just take a moment.

Mr. McKnight: Is there anything to add to our stipulation, by her?

Mr. Deutz: Yes, I think so. I would like to ask her just one or two questions. May I call her?

The Court: Come forward, Mrs. Maude Cook.

MAUDE COOK,

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Maude Cook. [233]

Direct Examination

By Mr. Deutz:

Q. And your address?

A. 220 South "I" Street, Madera.

Q. Now, Mrs. Cook, on July 24, 1946, by whom were you employed?

A. The District Attorney's office, County of Madera.

Q. In what capacity? A. Reporter.

(Testimony of Maude Cook)

The Court: Well, this is the Maude Cook that went down there and took the statements that have been mentioned.

Mr. Deutz: Very well.

Q. I direct your attention to August 5, 1946. Did you have occasion to take the statement from Mr. Uarte at the Dearborn Hospital in Madera? A. I did.

Q. What was the occasion of your going to take the statement at that time? Had you received word that you could see Mr. Uarte at that time?

A. Yes. Someone from the hospital called our office and said Mr. Uarte was conscious and if we would like to come over and speak to him, it would be perfectly all right.

The Court: And on what date was this?

The Witness: August 5th.

Q. By Mr. Deutz: And did you go to the hospital at [234] that time to take the statement?

A. I did, with Mr. Chandler.

Q. You were with Mr. Chandler. That was on the morning of August 5, 1946?

A. I believe it was just before lunch on that date, yes.

Q. And you and Mr. Chandler talked to Mr. Uarte at that time? A. Yes, we did.

Q. And did you ask Mr. Uarte certain questions?

A. Yes.

Q. And did he reply? A. Yes, he did.

Q. Now, I believe that the statement will show that Mr. Uarte stated to you at that time that he had no

(Testimony of Maude Cook)

recollection of what transpired at the time of the accident, is that correct?      A. That is right.

Q. But at the time you asked these questions, did Mr. Uarte understand the questions that were being propounded to him?

Mr. McKnight: To which we object as asking for a conclusion of the witness.

The Court: Objection sustained.

Q. By Mr. Deutz: Did Mr. Uarte reply promptly to the [235] questions that you asked him?

A. Yes, he did.

Q. Did he answer the questions that you asked him?

A. Yes.

Q. In other words, if a question was directed to any particular point, did Mr. Uarte reply to you in response on that particular point?      A. Yes, he did.

Q. In other words, in your opinion, he appeared to understand the questions propounded to him?

Mr. McKnight: To which we object, same grounds as I made before.

The Court: Objection sustained.

Q. By Mr. Deutz: Did you have occasion to notice Mr. Uarte's demeanor at that time?

A. Yes, I did.

Q. Did Mr. Uarte appear to be in good health?

Mr. McKnight: To which we object.

Mr. Deutz: I will correct that. We can't very well say "good health," because I realize that the man was seriously injured.

(Testimony of Maude Cook)

Q. But I will ask you whether his mind appeared to be alert? A. It appeared to be, yes.

Q. And he was able to answer your questions? [236]

A. Yes.

Q. And at least state to the effect that he had no recollection? A. Yes.

Q. Was there anything to indicate in your conversations with Mr. Uarte that he was suffering from any mental ailment or mental injury?

Mr. McKnight: To which we object.

The Court: Objection sustained.

Mr. McKnight: As a pure conclusion.

Mr. Deutz: That is all.

The Court: Step down. Do you have any questions?

Mr. McKnight: I guess not.

The Court: All right. I think the Navy men would like to eat dinner before they go on, anyway. So we will recess until 7:00 o'clock tonight. I better make it probably about 7:30 and then everybody will have plenty of time to eat. 7:30. Will you have your doctor here then?

Mr. McKnight: Yes, sir. I will call him. May all the witnesses be excused who have testified?

The Court: Oh, yes, surely. Every witness who has testified may be excused.

(Thereupon, at 5:04 o'clock p. m., Tuesday, May 25, 1948, a recess was taken until 7:30 o'clock p. m. of the same day.) [237]

Fresno, California, Tuesday, May 25, 1948. 7:47 P. M.  
(Trial resumed.)

The Court: The reporter will note an apology to counsel and everybody for being late. Proceed.

Mr. McKnight: Your Honor, we have our doctor here now. May we complete our case?

The Court: Yes.

Mr. McKnight: Dr. Solberg.

DR. LAWRENCE A. SOLBERG,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Lawrence Arthur Solberg.

The Clerk: And your address?

The Witness: 501 East Yomesite, Madera.

Direct Examination

By Mr. McKnight:

Q. You are a physician and surgeon duly licensed to practice in the State of California? A. Yes, sir.

Q. And where do you practice your profession? [238]

A. 501 East Yosemite Avenue, Madera.

Q. Is that a hospital? A. Yes, sir.

Q. A sanitarium?

A. It is the Dearborn Hospital.

Q. Were you practicing your profession there on July 24, 1946? A. Yes, I was.

Q. Doctor, how long have you been in practice?

Mr. Deutz: Counsel, we will stipulate to the doctor's qualifications.

(Testimony of Dr. Lawrence A. Solberg)

Mr. McKnight: I will appreciate that, your Honor, but I want to very shortly give to the Court some idea of his qualifications aside from being a physician and surgeon.

The Court: Well, what is he, a bone specialist or a brain specialist?

Mr. McKnight: I don't think he is a specialist.

The Witness: I am a general practitioner.

The Court: Sir?

The Witness: A general practitioner.

The Court: A general practitioner, a physician and surgeon?

The Witness: That is right.

Q. By Mr. McKnight: How long have you practiced your profession? [239] A. Since 1938.

Q. During the war, did you have any particular experience with injuries?

A. During the war, I was a flight surgeon in the Air Forces, and we had occasion to observe airplane crashes at times.

The Court: What does an applied surgeon mean? I have seen that name at times, but I don't know what it means, applied?

The Witness: It is a flight surgeon.

The Court: Oh, a flight surgeon?

The Witness: Yes.

Q. By Mr. McKnight: And in that connection you had occasion to deal with injuries on many occasions, I take it?

A. Yes. We had several injuries, quite a few of these airplane crashes.



(Testimony of Dr. Lawrence A. Solberg)

Q. And is Dearborn Sanitarium the only hospital in Madera? A. No, it is not.

Q. There are two?

A. There are three. One County and the Sanitarium and the Hospital.

Q. Now, when did you first see John Uarte, the plaintiff in this case?

A. I have here July 25th. [240]

Q. Nineteen forty what? A. 1946.

Q. Do you have the time?

The Court: Have you seen the doctor's notes?

Mr. Deutz: No, sir, I haven't, your Honor.

The Court: Do you wish to? He is referring to them. You may examine them before he looks at them, if you wish.

Mr. Deutz: I don't believe so, your Honor. I would like to ask a question on voir dire, though. I would like to ask Dr. Solberg one or two questions in regard to his notes.

The Court: All right.

#### Voir Dire Examination

By Mr. Deutz:

Q. Now, Dr. Solberg, those notes that you have there, are those part of a hospital record?

A. Yes, sir, they are a hospital record.

Q. And were they made by you at the time of the examinations or—

A. Some of them were and some of them were nurses' notes that they made day after day, temperature charts.

Q. Temperature charts, and things of that sort.

A. And the nurses' notes.

(Testimony of Dr. Lawrence A. Solberg)

Q. The notes you are starting to refer to there at the present time, when were those notes compiled? [241]

A. They were made after the patient came in. They weren't made already that night that he came in.

Q. Are they the result of your own observations?

A. Yes, sir, they are.

Mr. Deutz: That is all.

The Court: What you have before you are the original records, are they not?

The Witness: Yes.

The Court: Of this patient, from the time that patient was received until he was discharged?

The Witness: That is right.

The Court: And you were the attending physician and surgeon?

The Witness: Yes, I was.

The Court: To this patient, and those notes were either made by you or immediately under your direction by nurses or others in the hospital whose regular course of business it was to follow your directions, is that correct?

The Witness: That is right.

The Court: Very well.

### Direct Examination (Continued)

By Mr. McKnight:

Q. All right. Can you state when you first saw Mr. Uarte, do you have the time there? [242]

A. It was in the evening of the 25th—let me see. (Witness examines papers.)

Q. Was it in the evening or the early morning?

A. Oh, it was in the early morning, 12:15 a. m.

(Testimony of Dr. Lawrence A. Solberg)

Q. Of July 25, 1946?           A. Yes.

Q. All right: Will you tell the Court his general condition when you first saw him?

A. When I first saw him, he was very seriously injured; in fact, he was critical, and I didn't think that he was going to live.

Q. Was he unconscious when he came in?

A. He wasn't unconscious. He was very restless and irritable and would fight anything that you would try to do for him. We tried to put him on the x-ray table and he struggled against that, and then—

Q. Did he appear to be in possession of his faculties?

A. No, sir, he was not.

Q. Go ahead.

A. Later on, on the x-ray table, he began to—well, he began to pass out; he became so that he was unconscious.

Q. Was he bleeding from his mouth?

A. I don't recall any bleeding from the mouth.

The Court: What does bleeding from the nose indicate, Doctor? [243]

The Witness: Well, it can indicate just a contusion of the nose or it can indicate a skull fracture.

Q. By Mr. McKnight: Did you make as complete an examination of him as you could that night?

A. Yes, sir.

Q. Under the circumstances?           A. Yes.

Q. Did you observe him the next day?

A. Yes, sir.

The Court: Did you give him shock treatment?

The Witness: Yes, sir.

The Court: What does that consist of?

(Testimony of Dr. Lawrence A. Solberg)

The Witness: Well, there we gave him plasma and fluids intravenously, and he had a collapsed lung, so we put him in an oxygen tent right away.

The Court: You knew that then?

The Witness: Yes.

The Court: You diagnosed that right way?

The Witness: Yes, I did. I did that by fluoroscopy.

The Court: Yes.

The Witness: And he began to go bad on the x-ray table, so we had to stop everything and put him in the oxygen tent and start—

Q. By Mr. McKnight: And did that delay the treatment of his broken bones and the care of his other injuries? [244]

A. Well, yes; it delayed it until he was out of danger, until we thought he was, that he would make the grade.

The Court: What do you mean by if he made it?

The Witness: Well, if—Ordinarily, if he just had a fractured leg, we would probably fix him up the same night that he came in, but when he had this collapsed lung and was in danger of dying, why, you wait.

The Court: Your first concern is to save his life?

The Witness: Yes, sir.

The Court: The next concern is to patch up his leg, or something; is that it?

The Witness: That is right.

Q. By Mr. McKnight: And approximately how long after you first saw him was it before you could begin to set his bones and take care of that type of injury?

(Testimony of Dr. Lawrence A. Solberg)

A. Well, you will see that was on Saturday—July 27th—that we put that pin in there, that we fixed his leg up. We fixed his leg up on the 27th.

The Court: You put that pin in, what?

The Witness: We put him in traction, put his leg in traction on the 27th.

The Court: All right.

Q. By Mr. McKnight: And did you ultimately take x-rays? [245] A. Yes.

The Court: Well, what was wrong with him when you first found out everything that was wrong with him; how did you diagnose it?

The Witness: We diagnosed the fractures by x-ray.

The Court: Well, I don't mean how you came to your conclusion, but what was your conclusion, what was your diagnosis?

The Witness: Oh, well, he had a fracture right femur, a fracture of the third—

The Court: Where?

The Witness: It was at the juncture of the upper and middle thirds, about; you will see it was about in the middle portion of the leg.

The Court: About halfway in the thigh?

The Witness: Yes.

The Court: Not either joint?

The Witness: Not either joint.

The Court: He had a broken leg. All right. Then what else?

The Witness: The third, fourth, fifth, sixth, seventh, eighth and ninth ribs broken on the right, and a right pneumothorax.

(Testimony of Dr. Lawrence A. Solberg)

The Court: Where were the ribs broken, front or back?

The Witness: They were broken along the back, sort of [246] a diagonal line.

The Court: From the spine?

The Witness: Oh, quite a ways out from the spine; I would say about so far (indicating).

The Court: The witness is indicating about three inches.

The Witness: In a diagonal line.

The Court: Two inches? How many centimeters?

The Witness: Well, it varied. The top ones were out about three inches, three and a half, something like that, and the bottom ones were in closer.

The Court: In closer to the spine?

The Witness: In closer to the spine.

The Court: And what else did you conclude was wrong with him, then?

The Witness: A collapsed lung.

The Court: Right lung?

The Witness: That is right.

The Court: Was it full of blood?

The Witness: Not at that time. Later on we took a picture and it looked as though there had been some bleeding in it.

The Court: Later on?

The Witness: Yes.

The Court: Later? [247]

The Witness: Yes.

The Court: What do you mean by later, the next day or next hour?

(Testimony of Dr. Lawrence A. Solberg)

The Witness: No, no. It was several—it was a couple of weeks after; he developed some trouble in his chest.

The Court: All right. What else?

The Witness: And he had, I think it was, two lacerations at the scalp.

The Court: Did you x-ray his skull?

The Witness: No.

The Court: At no time?

The Witness: At no time. The reason for that—

The Court: Did you make any diagnosis as to whether or not he had any brain injury?

The Witness: Yes, sir. I—He had a cerebral concussion—he had the—I would say—

The Court: But as between a concussion and contusion of the brain, would you say that he had only a concussion?

The Witness: Well, that is pretty hard to say. He had cerebral damage, that he had. I couldn't say whether it was a concussion or a contusion.

Q. By Mr. McKnight: Doctor, at the time, did you not diagnose a condition of skull fracture?

A. Yes, I thought he had a skull fracture.

Q. And why didn't you take x-rays when he first came [248] in?

A. Well, when he first came in, he was in no condition to; we couldn't do anything but put him in an oxygen tent. Then, when he got better, when we had his legs strung up, then, he could not be moved from the room back to the x-ray room, and that was the only machine that we had that could take skull pictures. So when we



(Testimony of Dr. Lawrence A. Solberg)

had his leg fixed up, then the only machine we could take x-rays with was a portable, which would not take satisfactory skull pictures, and by the time he reached the condition where we could take him down and get x-ray films of his skull, it was no longer necessary for the treatment of his condition to have them.

The Court: You mean treatment of the condition of his skull or mental processes?

The Witness: Any—

The Court: Or orientation, or what do you say?

The Witness: Well, there would be nothing gained by taking x-ray pictures of his skull at that time.

The Court: In other words, if there had been any fracture, it would have started healing, is that it?

The Witness: Oh, yes, it would have started healing by that time.

The Court: How long was that?

The Witness: Well, it was 16 weeks before he got down where we could take him and take off the traction. [249]

The Court: You mean to take a picture of his skull?

The Witness: Yes. Outside of taking it with a portable, which we found from experience, it just doesn't take satisfactory x-ray pictures of the skull.

Q. By Mr. McKnight: Assuming that you had taken pictures of his skull and discovered his skull was fractured, would your treatment have been any different than it was? A. No, sir.

Q. It would have been exactly the same?

A. Yes, sir.

(Testimony of Dr. Lawrence A. Solberg)

Q. Then, you did diagnose a cerebral concussion, and according to your diagnosis a skull fracture. Anything else, Doctor?

A. Well, he had abrasions and contusions; let's see (witness examines papers); multiple contusions and abrasions.

The Court: Can you give an opinion of what the diagnosis of concussion which he had was?

The Witness: Oh, I would say it was moderate, moderately severe.

The Court: Moderate to severe?

The Witness: No. I would say moderate concussion. I think most of his unconsciousness, his lack of consciousness, came from his chest difficulty, and he had a moderate cerebral concussion. I don't think it could be classed as severe.

The Court: All right. I interrupted you counsel [250] Excuse me.

Mr. McKnight: Yes, your Honor.

Q. Doctor, what was his condition, what did you observe about his mental condition while he was under your care there?

A. Well, he didn't know where he was. His mind was always back some place along the line of that vacation trip that he had taken. He thought he was in Nevada at one time and he finally got it down as far as, I think, Merced. He never did get to Madera, oh, for a month or six weeks after he got there.

The Court: You mean in talking to you?

The Witness: That is right. I asked him every day, I made a point of it, to see how he was coming along.

(Testimony of Dr. Lawrence A. Solberg)

The Court: Yes.

Q. By Mr. McKnight: Did he seem to recognize people when they came in to see him or not?

A. He did not recognize his mother.

Q. What did he do, can you tell the Court, any peculiar things he did, that would indicate his mental condition?

A. First, he would take down all his traction apparatus every night. He would lower all the ropes and put all his weights on the floor. I don't know how in the world he did it, but they were always down there every morning. I had a [251] nurse to watch and see to be sure that some visitor didn't do it. They went in there and they said his weights were not down this morning. And I went in there and they were all down on the floor again. I asked him why he did it, and he said, "Did what?"

I said, "Lower your weights?"

He said, "I didn't do it." That went on for some days.

Q. When you talked to him about it, did he seem to realize he had done those things?

A. No. He denied it.

Q. How long was he in the hospital altogether?

A. He was in from the 25th of July to the 27th of November.

The Court: Of November?

The Witness: Until November, yes, sir.

Q. By Mr. McKnight: That is over four months?

A. Yes.

(Testimony of Dr. Lawrence A. Solberg)

Q. During that period of time, did he ever appear to you to have any memory at all of the happening of this accident, or anything of that kind?

A. No, sir. He never could recall the accident.

Q. Did you try to talk to him about it?

A. I asked him a few times about the accident, trying to find out just what happened.

Q. He never could remember about it? [252]

A. And he didn't know any more about it than I did.

Q. Doctor, do you still believe that these symptoms are symptoms of a moderate concussion?

A. Yes. I don't think it would be—well, it might be—

The Court: What is the difference between concussion and contusion of the brain, Doctor?

The Witness: Well, contusion means so much damage that there is actual bleeding, that is, gross bleeding in the brain. If you would open it up and cut it, you would see gross bleeding.

And a concussion is the damage which is evident maybe by bleeding, it might be evidence of bleeding; you might not even see it grossly, the evidence of it, but still the damage is done.

Q. By Mr. McKnight: I understood when he first came in there, he was bleeding from the nose?

A. Yes.

Q. Would that indicate possibly contusions?

A. Yes, it could be.

The Court: Was it a basal skull fracture?

The Witness: It would be a fracture in the crest of the ethmoid, which would be basal, yes.

The Court: The cerebellum?

(Testimony of Dr. Lawrence A. Solberg)

The Witness: It would be the basis of the cerebrum up [253] in the front, the frontal lobes.

Q. By Mr. McKnight: Is there any way for you to determine definitely whether this was a brain concussion or a brain contusion? A. No, sir.

Q. Or both? A. There wasn't.

The Court: Is there any way for a skilled person, upon mere observation of the patient, to determine whether or not there is a concussion or a contusion, when there is no outward physical evidence of piercing of the skull?

The Witness: Well, you can in certain types of damage, intracerebral damage, you can determine that it is pretty severe. I mean, you don't—a lot of basal skull fractures you diagnose, you take x-rays, and you still can't see them, but you know they are there; they bleed from the ear or they bleed from the nose, or they get hemorrhages behind the eyes, or they have pupillary changes, or they become unconscious, and their pulse will go up and blood pressure rise. Those are all evidences of cerebral damage.

The Court: Of basal?

The Witness: Well, basal or—

The Court: Other?

The Witness: —other, which is damage to the brain.

Q. By Mr. McKnight: Then, you are not in position to [254] say whether this was a case of contusions or of concussion?

A. I couldn't. I couldn't say positively.

Q. But you did say that in your opinion he did have a skull fracture?

A. I believe he had a skull fracture, yes.

(Testimony of Dr. Lawrence A. Solberg)

Q. Along with whichever, whatever he did have, is that right?

A. That is right. I believe he did have a skull fracture.

Q. How long was his leg in traction?

A. 16 weeks.

Q. 16 weeks. Did this condition of mental confusion, of taking his weights off, not being able to recognize people, that kind of thing, continue all during that period?

A. No, No. He quieted down after a while and was a very good patient?

Q. How long did those acute noticeable things continue?

A. I can't say exactly, but it seems—I know that it was at least a month, that he was doing that, that he was out fully that way, and it might have been six weeks.

Q. But you say he never regained his memory of the things surrounding the accident?

A. Not until he left.

Q. Not until he left there?

A. That is right. [255]

Q. What do they call that condition, where people lose their memory in accident?

A. That would be amnesia.

Q. That is called a—

A. Traumatic amnesia.

Q. Is that an uncommon condition in this type of injury?

A. No, sir; quite common.

Q. From your whole study of Mr. Uarte and all of your knowledge of his condition and your observation, there, do you feel or do you believe that he actually suffered from that condition?

A. Yes.

(Testimony of Dr. Lawrence A. Solberg)

Q. You don't believe that that was put on in any way?

A. No, I don't believe it.

The Court: Is that your opinion?

The Witness: That is my opinion, yes, sir.

Q. By Mr. McKnight: What did you do for him in connection with his chest and his ribs?

A. We strapped them, put a rib belt on at first, but he seemed to get along better without it, so we just kept him on a firm surface in the bed.

Q. Do you remember whether he suffered from any symptoms of head pain, headache, that kind of thing, while he was there at the hospital? [256]

A. I believe he did. I can't remember exactly whether he was—I know he was complaining of this scalp wound all the time.

Q. And what kind of treatment did you give in connection with the fracture of the leg, of the thigh? You said you put him in traction? A. Yes, sir.

Q. Very briefly, what did you do?

A. We put a pin through his tibia, the upper part of his tibia.

Q. Did that require an operation, to do that?

A. A minor one.

Q. An opening and incision, and so on, in the leg?

A. No. You don't make an incision. You just put the wire in, drill it through.

Q. Oh, you put it right through the whole leg?

A. And then you put a traction on that, and string a rope up over some pulleys and hang weights on it until it pulls the leg into line.

Q. And you keep him in that position?

A. And that holds the position and the length.



(Testimony of Dr. Lawrence A. Solberg)

Q. And it is your testimony that he was in that position for about 16 weeks? A. Yes, sir.

Q. After you took him out of traction, what did you do [257] for him with reference to the leg?

A. Well, we got a walking caliper for him.

Q. A what? A. A walking caliper.

Q. Is that a brace? A. Yes, it is.

Q. Made out of what?

A. Made out of iron.

Q. It is made out of iron?

A. Strap iron.

Q. And was he still wearing that when he left the hospital? A. Yes.

Q. When did you last make an examination of Mr. Uarte? A. I saw him yesterday.

Q. Did you examine him at that time?

A. Yes, I did. I looked him over.

Q. Did you take a history from him of the—

A. Well, briefly.

Q. Of how he was getting along, and so forth?

A. Yes.

Q. And talked to him? A. Yes.

Q. Examined his leg and his chest?

A. Yes; fluoroscopes. [258]

Q. What conclusions did you come to?

A. Well, I think he is doing—made a pretty good recovery. He still has some pain in the chest. He has some weakness in the leg.

Q. Let us take the chest. In your opinion, he still had some pain in the chest. What is that a result from?

A. Well, I think probably he has some, although I could not see it on the fluoroscope (I fluoroscoped him

(Testimony of Dr. Lawrence A. Solberg)

yesterday, too), but he is bound to have some residual pleurisy where he had that collapsed lung; that means that the thing, that the lung is punctured, that the pleura was punctured in that area in there, so I imagine that that would be causing the pain, and then, too, the rib cage is a very active organ. It moves constantly with each respiration.

Q. Do you think he will ever completely recover from that condition, or do you think following the period of time that has now elapsed, that he will continue permanently and for the rest of his life to have some difficulty there, some discomfort?

A. Well, I think he will continue to improve, but I believe that he will have pain for a long time, maybe the rest of his life.

Q. What is your opinion of his condition, now, in reference to his leg? [259]

A. Well, there is some—That leg is smaller than the other, and it is weaker; it has good motion in it. The leg, I think, too, will improve more than it has now. It will get better, but he probably will have,—

The Court: You say the leg is smaller?

The Witness: Yes, the muscles are still—they are doing pretty well, but they are still atrophied.

The Court: They are atrophied?

The Witness: Some atrophy, yes.

Q. By Mr. McKnight: Do you believe that that leg will ever be as good as it was before the accident?

A. I don't believe it will probably ever be as good.

Q. You think it will always give him some difficulty and he will experience some weakness in it?

A. Well, that would be—

(Testimony of Dr. Lawrence A. Solberg)

Q. I just want your opinion, Doctor, right or wrong?

A. I think he will—I think it will improve quite a bit more than it has now, but he could very well have pain in it—weakness, probably, all the rest of his life.

Q. About this head injury, is there any way as a doctor to determine what will be the final result of this head injury?

A. No. I think that, too, is just a question of—

The Court: What is that?

The Witness: I think that, too, is just a question of [260] waiting and observation. I don't believe you can say positively, now.

Q. By Mr. McKnight: From your experience with that type of injury, Doctor, do you find in some cases that they recover completely over a period of time, and in other cases, after that period of time and of apparent improvement, then they get worse, is that true?

A. Yes, that is right, they do.

The Court: Well, I do not understand your question. "Recover," recover what, recover his mental faculties or get well?

Mr. McKnight: Well, no.

The Court: Cease to have pain? What are you talking about? You better clarify your question.

Mr. McKnight: Yes.

Q. What history did Mr. Uarte give you? Did he tell you about his present condition in reference to his head?

A. He still has some dizziness and ringing in the ears.

Mr. Deutz: I object to that as hearsay.

Mr. McKnight: Well, history given to a doctor is not hearsay, your Honor.

(Testimony of Dr. Lawrence A. Solberg)

The Court: That is right.

Mr. Deutz: It is a self-serving declaration.

The Court: Objection overruled.

The Witness: He had some dizziness and ringing in the [261] ears.

The Court: The doctor's testimony is ultimately only opinion.

Q. By Mr. McKnight: All right. And did he tell you he had trouble concentrating, some trouble with remembering things, yet?

A. I don't remember that he told me that.

Q. Well, what I meant by my original question is—

A. He could very well have.

Q. What I mean by that is this, Doctor: Is there any normal course that a head injury of this kind always follows? I mean, in other words, if a head injury of this kind begins to show improvement, do you know from that that he is going to get completely well?

A. No, sir. That varies. It varies just like individuals vary with everything else.

Q. Isn't it true that a doctor never knows what may be anticipated from an injury of that kind?

A. That is right.

Q. In the future, regardless of the course that it has taken over a period of a year or two?

A. Yes, that is true.

Mr. McKnight: I think that is all, your Honor.

The Court: Cross examine. The long and short of your last statement is that you are unable to give any prognosis of [262] any future condition or injury?

The Witness: Yes.

(Testimony of Dr. Lawrence A. Solberg)

The Court: Either mental or physical, so far as his head is concerned, or brain?

The Witness: Yes, that is right. I couldn't say positively.

Cross-Examination

By Mr. Deutz:

Q. Now, Doctor, I believe you stated that at the time that this patient, Mr. Uarte, was brought into the hospital, that no x-ray was made of the skull, is that correct?

A. Yes, sir, that is right.

Q. And you determined that there was a skull fracture merely from the general outward appearance and symptomatic appearance of the patient; is that correct?

A. Yes.

Q. And in similar manner, you determined that Mr. Uarte had a concussion or a contusion?

A. That is right.

Q. Now, can't a contusion be a part of a concussion?

A. The two sort of interblend. I mean, it is—you can't—When it comes to a severe concussion, I mean you can't draw a definite line between the two.

Q. Now, Doctor, did you make a spinal puncture of [263] Mr. Uarte? A. No, I didn't.

The Court: What was his answer?

Mr. Deutz: "No."

The Witness: "No."

Q. By Mr. Deutz: Isn't it a fact, Doctor Solberg, that the tapping of the spine for spinal fluid and an examination of that fluid for blood content, for blood content, is one of the best methods of determining whether or not there is a concussion of the brain?

A. When there is brain damage, yes, that is right.

(Testimony of Dr. Lawrence A. Solberg)

Q. But you did not make such a test at this time?

The Court: For concussion or for contusion?

The Witness: For either one. No, I didn't make that.

Q. By Mr. Deutz: Wouldn't it be a normal practice to use that as a means of—

A. Well, if he had been in better condition, I would have.

Q. Was he in such bad condition?

A. You understand that he was in dying condition. I didn't expect—I had to get him in an oxygen tent right now. He was getting blue.

Q. But at no time after he was removed from the oxygen tent was a puncture made of the spinal column?

A. No, sir. [264]

Q. And at no time did you attempt to verify your superficial diagnosis by determining whether or not there was blood in the spinal fluid?

A. No, I didn't.

Q. In the ordinary course of events, wouldn't you use that as a means of verifying findings?

A. No, not unless—I don't do spinal punctures if the patient is doing all right, I don't do it. If they show signs of increased intracranial pressure, then I do spinal puncture.

Q. In this case I believe it was your preliminary diagnosis that there was a skull fracture and probably contusion or concussion?      A. Yes.

Q. Wouldn't that conclusion by you be sufficient for you to want to verify it by a spinal puncture?

A. Not unless he showed some signs of increased intracranial pressure.

(Testimony of Dr. Lawrence A. Solberg)

Q. When Mr. Uarte was well enough to be taken to a place where he could have a skull x-ray made, you felt that was no longer necessary?

A. That is right.

Q. Do you mean by that that you felt the mental or brain condition had so improved that further examination in that line was no longer necessary? [265]

A. No—Well, his general condition was so improved that I didn't feel that it was necessary, and it wouldn't add anything to his treatment.

Q. Well, at that time you were no longer worried about whether or not it was actually a skull fracture or not, is that right? A. That is right.

Q. In other words, Mr. Uarte's condition had progressed to such an extent that any worries on that score no longer prompted you to want an x-ray?

A. That is right.

The Court: In other words, if he had a bad skull fracture, he would have been dead by that time?

The Witness: Yes, if he had showed some signs of increased intracranial pressure, in doing the taps—

The Court: So you came to the conclusion—

The Witness: So I came to the conclusion that he had brain damage.

The Court: But whatever brain damage there was, it was healing itself?

The Witness: Well, yes.

Q. By Mr. Deutz: And there were no signs of this intracranial pressure?

A. No. There were no signs at any time of this intracranial pressure. [266]



(Testimony of Dr. Lawrence A. Solberg)

Q. You also stated that sometimes in Mr. Uarte's statements he would talk about portions of his vacation in Nevada, and he then finally got down as far as Merced in his recollections. Do you recall how long after the accident happened, or how long after Mr. Uarte entered in the hospital that he began to have, roughly, memory to the extent of remembering having been at Merced?

A. Well, the Nevada memory was quite early.

Q. How early?

A. It was within the first week.

Q. Within the first week?

A. Yes, and then he went—I felt very elated.

Q. He remembered he had been on a vacation up in Nevada?

A. Yes. He said he was some place in Nevada.

Q. On a vacation?

A. Yes, I believe he said on vacation.

Q. Did he remember who was with him or any of the features of the trip at all?

A. I don't recall any.

Q. You said you followed him and finally got him down to Merced?

A. Yes. One day I went in and asked him where he was and he said, "Merced." Well, I was quite elated, and I thought tomorrow he would be in Madera, tomorrow, and when [267] I came back the next day, he was back in Nevada again.

Q. How long after he was admitted was he talking about Merced?

A. I think that was early. It was along about the end of the second week—

(Testimony of Dr. Lawrence A. Solberg)

Q. The end of the second week?

A. —or beginning with the third week.

Q. Do you recall an instance when Mr. Walter Chandler of the District Attorney's office in Madera and a Mrs. Maude Cook came up to examine Mr. Uarte or to ask him a few questions?      A. Yes.

Q. Did they have your permission at that time?

A. Wait a minute, now.

Q. He was your patient.

A. That was when he was in the hospital—

Q. Yes, that was on August 5, 1946, to be exact.

A. I don't remember it.

Q. That was 10 or 12 days after the accident.

A. I don't remember, but I suppose they had my permission.

Q. You don't recall specifically?

A. I don't recall specifically.

Q. Whether they were there?      A. No. [268]

Q. Would your notes give you some indication of what Mr. Uarte's condition was on August 5, 1946?

A. (Witness examines papers.) The only note I have there was that—a nurse's note, which says, "Seems more rational. He had a good night."

The Court: What does "a good night" mean?

The Witness: Oh, well, that is a sort of routine statement they make when the patient doesn't give them too much trouble, I think. I mean, he doesn't exact—well, just a good night.

The Court: It means better than the previous night, is that it?

The Witness: Well, yes, yes; they make that remark, they either put "a good night" or "bad night," depending

(Testimony of Dr. Lawrence A. Solberg)

on how he went through the night, whether he was comfortable or uncomfortable, whether he slept or did not sleep.

Q. By Mr. Deutz: Will you tell me how long after the time Mr. Uarte was admitted to the hospital he was actually unconscious?

A. He was actually totally unconscious only that—I was talking to him the next day, but he couldn't—I mean he could talk to you, but it didn't make sense. He became unconscious when he was on the x-ray table.

Q. He was conscious before that?

A. When he first came in, he wasn't exactly conscious. [269]

The Court: When you say "unconscious," what do you mean?

The Witness: Comatose.

The Court: Comatose; he hasn't any senses?

The Witness: That is right.

Q. By Mr. Deutz: He was not comatose when he was brought in?

A. No. He was irrational, kind of wild. As I say, he resisted us putting him from the Gurney onto the x-ray table, and he did not want anybody to touch him any place, and he would push you away, but while we were examining him, he became quieter and finally became comatose.

Q. How long did that comatose condition last?

A. Well, he was still in it when I went home that night, and the next morning he was out of it.

Q. Would your records show—

A. I don't believe so.

(Testimony of Dr. Lawrence A. Solberg)

Q. —when he appeared to come out of that?

A. I don't know. Here on the 26th is a note, "Conscious at times." Well, that was the day I was talking to him.

Q. Does that state the hour?

A. Yes, I note it was made at—

The Court: When you say "unconscious," Doctor, let me understand that completely. Do you mean that a person then [270] gives no evidence at all of having any of their senses in operation except breathing?

The Witness: That is right, your Honor. He is out like a light.

The Court: You mean when a person is out like a light? Is that what you mean?

The Witness: That is what I mean.

The Court: I understand that.

Q. By Mr. Deutz: Did you give us the hour on that other?

A. It was around noon. I haven't got it exactly.

Q. Around noon on the 26th? A. Yes.

Q. Was that the 26th? A. The 26th.

Q. Or was that the 25th? A. The 26th.

Q. You remember this happened to be the morning of the 25th, at midnight? You went home that night?

A. No. This note is dated the 26th here. He came in that 25th.

Q. At 12:00 a. m.

A. Then we took care of him that night and he was unconscious. He was out and I went home. The next day I came back. [271]

Q. That was still the 25th?

A. I guess that was the same day.

(Testimony of Dr. Lawrence A. Solberg)

Q. You went home at what time, in the morning?

A. That is right. I don't recall exactly.

Q. But this was 12:15 a. m.?

A. He came in at 12:15 a. m. We took care of him. We were there for about an hour. I imagine it was about 2:00 o'clock when we went home.

Q. Then, when you came back the next time—

A. Then, when I came back the next time, we talked to him.

Q. That was on the 25th, the same day?

A. That is right; that is the same day.

Q. Now, I would like to ask you one last question, and that is this? So far as you know from your actual examinations of Mr. Uarte, is this correct: That you cannot now definitely state that you are definitely sure that Mr. Uarte actually had a skull fracture, a concussion or a contusion of the brain; can you state that unequivocally?

A. Well, no; those things you can't state unequivocally.

Q. In other words, there were no tests, none of them, more or less concrete medical tests, given that would definitely establish any one of those conditions?

A. Well, the only thing is your clinical?

The Court: You said he had brain damage? [272]

The Witness: That is right.

The Court: Definitely?

The Witness: Yes, I would say definitely, he had brain damage.

The Court: You can't classify whether it was contusion or concussion?

The Witness: No, I don't know.

(Testimony of Dr. Lawrence A. Solberg)

The Court: Or basal fracture?

The Witness: No.

The Court: Frontal, cerebellum, or cerebrum?

The Witness: No. I couldn't localize it.

Redirect Examination

By Mr. McKnight:

Q. Doctor Solberg, just to clear up one thing: You say you would talk to him and on one day he would say he was in Nevada and the next day or at another time he would say he was in Merced?

A. Well, that is just once, he said he was in Merced.

Q. Then the next time you talked to him, he said—

A. One time he was at Oakland and another time I think he was even down there at Los Angeles, once.

Q. You mean by that he thought he was in those places when you were talking to him?

A. Yes. You would go in in there and you would think [273] he looked perfectly well, and ask him how he felt. He would tell you he felt good or he would tell you he hurt some place. Then you would ask him if he knew where he was, what town this was. He would look at you and say, "Oh, I think Las Vegas," or some place over there.,

Q. In other words, he was relating to you where he had been on his vacation, he thought he was in those places at that time?

A. That is right; he thought he was there.

Q. And he was actually in Madera?

A. That is right.

Q. And then, the next time he would be some place else; if you talked to him one day and then talked to him

(Testimony of Dr. Lawrence A. Solberg)

the next day, would he appear to remember what he had told you the day before?      A. No, sir.

Q. About where he was, about anything?

A. Not about where he was. I don't remember any particular thing excepting that.

The Court: He would complain?

The Witness: Yes, he would complain of his pain.

The Court: Doctor, is that common, where somebody has this amnesia, to be able to describe their pains and things that happened to them during their period of amnesia but not to remember anything else? [274]

The Witness: I don't know what you mean. Pardon me. That pain—

The Court: Well, if a person had amnesia and you knew that they had amnesia, would that person be able to relate to you that he had cut his finger an hour ago?

The Witness: No, but he could tell you if he had pain.

The Court: He could tell you if he had pain?

The Witness: At the time.

The Court: At the time?

The Witness: You would ask him if this or that hurt, then, yes or no.

The Court: But he wouldn't be able to remember where he did it?

The Witness: No.

The Court: Or how?

The Witness: No.

The Court: All right.

Mr. McKnight: That is all, Doctor.

Mr. Deutz: Just a moment. That is all.

Mr. McKnight: May the Doctor be excused, Your Honor?



(Testimony of Dr. Lawrence A. Solberg)

The Court: No. I think probably—I see Dr. Ceroni here. It looks like he is going to testify for the government, and maybe the doctor better wait here until the government gets through.

Mr. McKnight: May I ask the doctor a question about [275] leaving word where we could get you, Doctor?

The Witness: Well, they don't know exactly what you know.

The Court: Is this a message?

The Bailiff: Yes. Here is a message for him to call 297 Madera as soon as you finish.

The Court: Take him into chambers and let him use the telephone there.

Mr. Deutz: Your Honor, I might suggest that Dr. Ceroni informs me that he has nothing to add to the testimony, so I have no desire to call him.

The Witness: I have a woman that is about to have a baby, and she is in labor up there.

The Court: I did not understand: Do you have a baby?

The Witness: No. A woman in labor. She has been in labor all day.

Mr. Deutz: I don't intend to call Dr. Ceroni. He informs me he has nothing to add to this testimony.

The Court: You have no medical testimony? The doctor can be excused. Mr. Welch, the bailiff here, will take you in chambers and you can immediately telephone that woman.

The Witness: Thank you.

(Testimony of Dr. Lawrence A. Solberg)

Mr. McKnight: Let the record show, if your Honor please, that the doctor had in Court with him all of his x-rays. [276]

Mr. Deutz: I did not hear that, your Honor.

The Court: He said let the record show he had in Court with him all of his x-rays. I don't know whether they were all. He had a bundle of x-rays.

Mr. Deutz: Well, the x-rays are not introduced into evidence.

The Court: I know. Counsel, do you know that they are his x-rays?

Mr. McKnight: Yes, your Honor. That is what he told me.

Mr. Deutz: I will stipulate he had x-rays with him.

The Court: All right.

Mr. McKnight: And they have been previously submitted to Dr. Ceroni.

The Court: They have been previously submitted to Dr. Ceroni?

Mr. McKnight: Yes, your Honor.

Mr. Deutz: We will so stipulate.

The Court: Do you want to excuse the doctor, now?

Mr. McKnight: Yes.

The Court: Do you rest?

Mr. McKnight: Yes, your Honor.

The Court: I mean finally rest?

Mr. McKnight: Yes, your Honor.

The Court: Call your witnesses. [277]

Mr. Deutz: Very well. I will call Lieutenant Becker.

ALEX T. BECKER,

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name.

The Witness: Alex T. Becker.

The Clerk: What is your address?

The Witness: 144 Saipan Road, San Francisco.

Mr. Deutz: May I have the photographs, your Honor?

The Court: I am sorry. You can have them all.

What are your arrangements for getting back to San Francisco? I take it you want to go tonight?

The Witness: I have my own car.

The Court: Do you have other personnel with you from the Navy?

The Witness: I have a Chief there that is with me, and the other two gentlemen came in their own car. We both have cars.

The Court: Very well. So you don't have to make any deadline on the train?

The Witness: That is right.

The Court: So we can relax and let you testify, then.

The Witness: All right. [278]

Direct Examination

By Mr. Deutz:

Q. You are a commissioned officer in the United States Navy? A. That is correct.

Q. On or about July 24, 1946, or shortly thereafter, were you called upon to make an investigation or examination of any of the vehicles involved in the accident that has been under discussion in this trial?

(Testimony of Alex T. Becker)

The Court: Any of the what?

Mr. Deutz: Any of the vehicles.

A. No. Not on that particular date, because I was returning off of leave the following day.

Q. By Mr. Deutz: Well, at a date subsequent thereto, were you assigned the duty of examining any of these vehicles?

A. Well, no. It was another officer who is now in civilian life. He is in the courtroom. He was assigned as an investigator with the Chief.

Q. Did you have occasion to examine the Golden State Peterbilt tractor-trailer unit that is under discussion here at this time?

A. That is correct. I investigated that there on the 31st day of that month, when we returned to Oakland.

Q. And where was that unit at that time?

A. It was over there in their repair garage where they [279] store all their vehicles.

Q. And you went over and examined that vehicle at that time?

A. That is correct.

Q. Could you tell us what you found in the way of injuries or damage to that vehicle?

A. I found that the radiator on the right-hand side was pushed in about two and a half feet, just on the left side, up against the engine itself.

The Court: What is that, on the right side two and a half feet against the left side? I don't follow you.

The Witness: No. Against the engine. The radiator on the right-hand side was pushed two and a half feet up against the engine.

The Court: Oh, I misunderstood a word.

(Testimony of Alex T. Becker)

The Witness: And the right fender was also pushed up about a foot and a half, and the bumper on the right-hand side, that was pushed in also about a foot or more and had the concave in the center of the bumper itself as though one impact hit it first and another one on the end of the bumper and towards that right front wheel, and the spring was also—the shackle on the spring was broken. It was laying on the ground. And also the U-bolt on the frame, that held the axle to the frame, that was sheared off.

The Court: That is your business in the Navy; I mean [280] mechanical equipment?

The Witness: Yes. I am an engineering officer, a motor man.

The Court: Assigned to motor vehicles?

The Witness: We have 34 of them assigned to our recruiting district.

Mr. Deutz: Very well.

The Witness: And the runningboard on the right-hand side, that was also sheared off, including the battery that was on that side, that was—part of that battery was missing, and it was shattered; and the headlight, that was also broken and pushed in considerably.

And that is about the only thing that I can recollect was wrong with that.

Mr. Deutz: This was all on the tractor.

The Court: The tractor?

The Witness: That is what they call it.

Mr. Deutz: The tractor, that is the motor unit.

(Testimony of Alex T. Becker)

Q. Now, did you find any injuries to the side of the semi-, the semi-trailer?

A. Well, on that little trailer that they have behind the semi, I saw approximately a foot or a little less above the wheels, in other words, the bottom of this particular semi, there is a line there that could run about a foot long.

Q. This was on the semi itself? [281]

A. Yes, that is right—No; the trailer.

The Court: Wait a minute. That was on the trailer.

Mr. Deutz: There are two trailers.

The Court: You have three units.

The Witness: The semi, and then you have the trailer.

The Court: The semi is the big body of the tractor?

The Witness: Yes.

The Court: And the trailer was on the end unit?

The Witness: Yes.

The Court: And what you are describing now was on the trailer?

The Witness: That is right.

Mr. Deutz: The end unit, the third unit.

The Court: The third unit.

Mr. Deutz: All right.

Q. Did you notice any damage on the second or middle unit?

A. Well, not that I recollect, at that time; I was looking more for damage to the tractor itself, because I didn't think there was any damage to the semi or the trailer at all. They seemed to be intact, and, in fact, I couldn't—I didn't see them over there. They were gone.

Mr. Deutz: I see.

The Witness: But I did,—

(Testimony of Alex T. Becker)

Q. By Mr. Deutz: Now, Lieutenant Becker, I show you [282] Plaintiff's Exhibit No. 8, and I will ask you—

Mr. McKnight: Let me see which one that is. Thank you. Go ahead.

Q. By Mr. Deutz (continuing): I will ask you if that is a true representation of the injury to the front end of that vehicle, as best you could determine?

The Court: "That vehicle"?

Mr. Deutz: The vehicle being the truck.

The Court: The truck.

Mr. Deutz: The truck and trailer unit, this in particular being the tractor.

The Court: Well, let us call it the truck.

The Witness: That is what I observed over there, although I had a better view, because I was right up on top of it and one of the wheels was completely off when it was out there in Oakland.

The Court: One of the wheels was off?

The Witness: They had it off.

The Court: Oh, they had taken it off?

The Witness: Yes, because the hub was bent.

Q. By Mr. Deutz: You spoke of injury to the trailer. I show you Plaintiff's Exhibit No. 10 and I will ask you if that is the injury?

The Court: That is the picture of the semi-trailer? [283]

Mr. Deutz: Yes, that is the picture of the semi-trailer.

Mr. McKnight: I understood the witness to say that he didn't see the semi-trailer.

The Court: He said it wasn't there.

The Witness: No.



(Testimony of Alex T. Becker)

Mr. Deutz: I would like to refresh the witness' memory, by showing him this photograph and asking him whether the identical—

The Court: That certainly would not be permissible, but go ahead.

Q. By Mr. Deutz (continuing): Whether the markings that you have seen on that vehicle were the markings you have just described?

A. Those are the markings I observed all right.

The Court: You wish to correct your testimony now to say that it was on the semi-trailer and not the trailer?

The Witness: That is right, because there was a little confusion because the picture is a little small.

The Court: All right.

Mr. Deutz: That is all.

#### Cross-Examination

By Mr. McKnight:

Q. Will you explain just one thing so that I will [284] understand it? You say they weren't there and you didn't see them, Lieutenant. Then, how could you identify the photograph?

A. Well, I identify the photograph from the picture that I saw on the—let's see, about a week after we received them over at the station.

Q. Oh, you identify this picture from another picture that someone showed you, is that right?

A. No. These are the originals that came from—

Q. But you didn't see the semi-trailer or the trailer?

A. No, I didn't.

Mr. McKnight: I move that testimony be stricken out for the purposes of the record, then, your Honor, if he did not see them.

(Testimony of Alex T. Becker)

The Court: It is his testimony. I can believe it or not believe it. It all goes to the weight of his testimony and not to whether it is admissible. If it is not admissible, you strike it out, and if it is admissible, you leave it in.

Mr. McKnight: That is right.

The Court: And it is admissible.

Redirect Examination

By Mr. Deutz:

Q. Now, Lieutenant Becker, did you examine this semi-trailer and trailer, with reference to which you gave me a [285] few minutes ago your recollection, was that of your own observation, or did you obtain that only from the photograph? A. The photograph.

Mr. Deutz: Very well.

The Court: You may step down, Lieutenant. And call the next witness.

Mr. Deutz: Chief Burgess.

WILLIAM EDWARD BURGESS,

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: William Edward Burgess.

The Clerk: And your address?

The Witness: Home address?

The Court: No.

The Witness: 98 Golden Gate Avenue, San Francisco.

The Court: What is your first name?

The Witness: William.

(Testimony of William Edward Burgess)

The Court: William Burgess?

The Witness: Right, sir.

Mr. Deutz: Will you bear with me for just a moment, your Honor?

The Court: What is this, a new set of photographs? [286]

Mr. Deutz: I have some. Yes, this is a new set.

The Court: Well, just show them to counsel here so that we save time. While you are showing him all those pictures, we will have a recess.

Mr. Deutz: Very well.

(Whereupon, a short recess was taken.)

Mr. Duetz: Take the stand again, Mr. Burgess.

#### Direct Examination

By Mr. Deutz:

Q. Now, Mr. Burgess, you are a member of the United States Navy, is that correct? A. I am.

Q. And what is your rating?

A. Chief Machinist's Mate.

Q. And where are you assigned?

A. United States Navy Recruiting Station, 98 Golden Gate Avenue, San Francisco.

Mr. Deutz: I think we will have to go just a little slower.

The Witness: All right.

Mr. Deutz: We have a reporter taking everything down.

Q. Now, Chief Burgess, were you assigned to a duty somewhere shortly subsequent to July 24, 1946, to investigate the circumstances surrounding an accident at mader, [287] California?

A. Did you say before?

(Testimony of William Edward Burgess)

Q. Shortly after July 24, 1946.

The Court: Subsequent.

A. Yes, I was.

Q. By Mr. Deutz: And on what date did you go to Madera?

A. I went up to San Francisco at approximately 11:00 o'clock.

Q. On what day? A. On the 25th.

Q. That was the day after the accident?

A. The day after.

Q. And when you arrived at Madera, did you have occasion to examine any of the vehicles involved in the accident? A. I did.

Q. And which vehicle did you examine?

A. Both vehicles.

Q. Both vehicles?

The Court: Both?

The Witness: The station wagon and the private party sedan.

Q. By Mr. Deutz: Where were those vehicles at the time you examined them?

A. The name of the garage I do not know. [288]

Q. Were they both in the same garage?

A. Both in the same garage, behind a gate.

Q. Now, calling your attention to the 1941 Ford V-8 deluxe four-door sedan, Mr. Uarte's car, you made an examination of that vehicle? A. I did.

Q. Now, do you recall what you found in the way of damage to that vehicle? A. Well—

The Court: Have you got some notes?

The Witness: Well, I can pretty well describe it, sir.

(Testimony of William Edward Burgess)

The Court: All right. If you have notes and need them, you can refresh your memory.

The Witness: I have none.

The Court: Providing you let counsel see them.

The Witness: The front of the sedan, both sides, the front of the sedan by the left and right fender and front grille was in pretty bad shape, was pushed back, and if I remember correctly, the wheels toed in. The right front tire was flat, and the front right—the front left door was open and could not be closed; it was beyond the catch, the safety catch, that stops the door from going so far.

And the left rear of the sedan, if I remember correctly, the small window was cracked and there was scrapings on that side, and the fender was pushed in against the car. [289]

All the tires, in my opinion, were what I would call smooth tires, with tread on the side, the tread perhaps showing an imprint of tread but still what I would consider smooth. One tire lying in front of the car was smooth. That tire evidently was on the left rear and it was also flat.

Mr. Deutz: Just a moment, Mr. Burgess.

The Witness: Yes.

The Court: Do you have a series of pictures?

Mr. Deutz: Yes, I have, your Honor.

The Court: Have the Clerk mark them for identification. I guess you start with A.

The Clerk: Yes, your Honor.

The Court: How many do you have?

Mr. Deutz: There must be about six or seven.

The Clerk: One to seven.

(Testimony of William Edward Burgess)

The Court: A, B, C, D, E, F, and G.

The Clerk: Do you want that marked A?

Mr. Deutz: Yes.

Mr. McKnight: Your Honor, would it save time if we just stipulate that they all be—if counsel desires them in evidence, if we stipulate that they all be introduced in evidence and we can just use them as we see fit, rather than take the time to identify each one.

The Court: They are admitted in evidence. [290]

Mr. Deutz: Very well.

(The photographs referred to were marked Defendant's Exhibits A to G, inclusive, and received in evidence.)

Q. By Mr. Deutz: Now, Mr. Burgess, I show you Defendant's Exhibit A in evidence and ask you if that photograph represents a front or head-on view of the 1941 Ford sedan? A. It does.

The Court: On—

Q. By Mr. Deutz: On the date on which you made the examination?

The Court: July?

Mr. Deutz: July 25, 1946.

The Court: The 25th or 26th?

Mr. Deutz: Well, let's see:

Q. Was it the 25th, Mr. Burgess, or the 26th?

A. I could not be sure. It was 4:30 in the evening when we arrived in Madera, and whether it was light enough to still take those pictures, I don't remember.

The Court: It was either day?

Q. By Mr. Deutz: It was one day or the other, is that correct?

A. The 25th or 26th. Yes.

(Testimony of William Edward Burgess)

Mr. Deutz: Just a moment. You were speaking of a tire [291] which was lying in front of the car and it had been removed from the right—I mean, from one of the rear wheels?

Mr. McKnight: Just a moment. To which we object.

The Court: A conclusion of the witness. It is stricken from the record.

Which you had been advised had been removed from one of the rear wheels? Did you see it removed?

The Witness: No, sir.

The Court: All right, it is stricken.

Q. By Mr. Deutz: Is that the tire of which you spoke? A. That is right.

Q. The tire which is shown in that photograph?

A. That is it.

Q. And is that tire in the approximate condition that you noticed the tires of that vehicle?

A. That is right.

The Court: Let me see it.

Q. By Mr. Deutz: Mr. Burgess, you spoke a moment ago about certain damage to the Ford sedan. I show you Plaintiff's Exhibit No. 3 and ask you whether that represents an accurate picturization of the left side of the Ford sedan? A. Yes.

Q. I call your attention to the damage to the left rear fender of that vehicle and ask you whether that was the [292] damage you have just described?

A. Yes. I mentioned pushed in.

Q. Now, Mr. Burgess, did you notice any paint marks on the fenders of that vehicle foreign to the color of the car itself? A. On the 25th or 26th, yes.



(Testimony of William Edward Burgess)

Q. And what was the color that you found on that fender?

A. Cream, I guess. In other words, it shows here but it doesn't show too clearly in my pictures, like a sideswipe.

Q. In other words, it was a smear of paint substance on that fender foreign to the natural color of that car?

A. Yes.

Q. And it was impregnated in the wreckage of that fender?

A. Yes, it smeared, I mean under, what I mean, paint rubbing together, friction caused it, the blending.

Q. I see. Now, do you have anything to add to a further description of the damage to that vehicle?

A. No, I do not think so. No, nothing.

Q. But you found some flat tires on this car?

A. Well, the one in front.

Q. The right front one was flat?

A. The right front was flat and the one lying in front [293] of the vehicle was flat.

Q. Now, Mr. Burgess, did you make an examination of the government station wagon involved in this accident?

A. I did.

Q. I show you government's, Defendant's Exhibit B.

Mr. McKnight: May I see which one it is?

Mr. Deutz: Surely. All right.

Mr. McKnight: B and A. Thank you.

Q. By Mr. Deutz (continuing): Will you—I will ask you, in your examination of the government vehicle, the Ford station wagon, does that photograph adequately portray and accurately portray the appearance of that vehicle from the front? A. Yes, it does.

(Testimony of William Edward Burgess)

Q. And I will show you government's, Defendant's Exhibit F, and I will ask you whether that photograph accurately portrays the damage to the government station wagon as shown from an angle from the right front of that vehicle? A. Yes.

Q. Now, more specifically, Mr. Burgess, do you recall the general character of damage to this vehicle, would you be able to describe it?

A. Of the government station wagon?

Q. That is the station wagon.

A. I itemized that, and very closely, part for part. [294] It would be hard for me to do that from memory, but I can give you a general description, in taking it from the left front side and on around, as I did, crawling underneath of it and going through it.

Q. Well, let us take that left front side.

A. The left front side—

Q. Or let us take the left side generally.

A. The left side: The headlight was intact and the left front fender was not scratched. The running board was intact. The window operates up and down and on that left front door is not cracked or broken. The same applies to the rear. In the left rear door, the window would roll up and down, and was not cracked. Of course, closing was impossible. It closed on an angle.

The left rear fender is in a buckled shape, the body being pushed back.

The Court: Buckled?

The Witness: Buckled, yes. The rear body of the tailgate is busted. One of the seats, I believe it was the back seat, was completely missing, and the back tail light

(Testimony of William Edward Burgess)

was cracked. The top was torn open and the top itself was torn all the way off.

Q. By Mr. Deutz: Was there any damage on the left side of this vehicle to indicate an impact at that particular side of the vehicle? [295]

A. None whatsoever. Impact possibly by rolling over, yes.

Q. But, was there anything to indicate that there might have been any sideswiping of that vehicle?

A. There was no sign of paint, of another color of paint blending there, or there wasn't any scratch marks, particularly on the left side, left front fender.

Q. Would you give me what the general nature of the damage was to the rest of the vehicle? First of all, what was the condition of the tires?

A. The front tires were both new. I know that, because I sent them down there just after the vehicle came down.

The Court: Well, from what you saw on the car.

The Witness: The tires were in very good condition.

The Court: Neither of them were collapsed?

The Witness: No. They were all inflated at the time.

Q. By Mr. Deutz: All four tires were inflated?

A. All four tires were inflated, yes, all four tires inflated, the spare also; the spare intact.

Q. Just give us a general run-down as to the rest of the damage upon that vehicle.

A. The block, it says cracked loose from the body of the car; twisted the radiator. Half of it was intact and [296] sagged and blended, and the other half is still lying in the field, I suppose. The driver's seat, it says,

(Testimony of William Edward Burgess)

was twisted, and the steering wheel was bent. The frame no doubt is out of line. The spring bent. Generally, a total loss, I would say.

Mr. Deutz: That is all.

Cross-Examination

By Mr. McKnight:

Q. What color was the station wagon?

A. The station wagon had three colors. The fenders were 1-2-3 gray, that is the Navy gray, 1-2-3 Navy specification.

Q. You would not know what that means?

A. Well, that is gray, such as your shirt.

Q. Something like my shirt?

A. Right, perhaps a little lighter.

Q. And do you know what the coating underneath that is? A. The undercoat of the vehicle?

Q. Yes.

A. Occasionally a brand of red, but mainly black after a steam cleaner brings out the black.

Q. And then what other color was there on the station wagon except this gray? [297]

A. The two other colors. Of course, the top is black, that is the canvas top, and then the woodwork on the vehicle, all the outstanding parts are white, bleached white, and the other is a shellac or a varnish, rather, varnish on the part where the sign is, on the protruding numbers, "U. S. Navy," and so forth, that is in black and brown, light brown.

Q. What part of it is bleached white?

(Testimony of William Edward Burgess)

A. Such as the door, these stripes here, the frame, say, the frames of the door.

Q. The bleached white, is that pure white or like a cream?

A. Like an egg shaped white—I mean an egg yolk, white, kind of yellowish.

Q. That is a yellowish white, and that was part of the trim on the station wagon?

A. That was part of the trim on the station wagon.

Mr. McKnight: That is all.

Redirect Examination

By Mr. Deutz:

Q. Mr. Burgess, this egg yolk white you were just speaking of a moment ago on the frame, could that in your opinion have been the cream colored paint that you have previously described on the left rear fender? [298]

Mr. McKnight: To which we object as calling expressly for the opinion of a witness on a matter not within the realm of expert testimony—

The Witness: No.

Mr. Deutz: Just a moment.

Mr. McKnight: —and asking for the opinion and conclusion of the witness.

The Court: Well, anything could be, counsel. The objection is sustained.

Mr. Deutz: Very well.

Q. Mr. Burgess, you previously described a paint smear.

A. Yes.

Q. On the left rear fender of that car.

A. That is on what?

(Testimony of William Edward Burgess)

Q. On the left rear fender of the—Wait a minute. Now, I am getting confused.

The Court: We have had confusing evidence today.

Mr. McKnight: Sir?

Mr. Deutz: I would like to ask this question: On the left rear fender of the Ford sedan you found some cream colored paint?

The Witness: Yes.

Q. By Mr. Deutz: A smear?

A. A streak. [299]

Q. A streak. Now, in your opinion, was the cream colored paint on that Ford sedan identical with the egg yolk, I believe it was egg yolk, colored paint you found on the frame of the Navy station wagon?

A. When I refer to paint on the Navy station wagon, I mean varnish or shellac. That is not paint.

Q. And the egg yolk color that you just referred to was the varnish or shellac and not a metallic paint on the body?

A. Of the station wagon?

Q. Yes. A. That is right.

Mr. Deutz: That is all I want.

#### Re-Cross Examination

By Mr. McKnight:

Q. When you speak of a yellowish white, it is practically the same color as a cream, isn't it? Cream is a yellowish white, isn't it?

A. Well, that is the bleach of the white; that is, shellac or varnish over some will bring out the wood. Varnish is transparent.

(Testimony of William Edward Burgess)

The Court: Did you make any chemical analysis or microscopic study of any of this paint that you speak of, of any of its particles, to determine whether or not it [300] was shellac, varnish or paint?

The Witness: I did not scrape any off.

The Court: Very well. You are not the man who examined the truck?

The Witness: No, sir.

The Court: Do you know how high above the surface of the ground the top of the station wagon was, at the hood?

The Witness: I beg your pardon?

The Court: Do you know how far above the surface of the ground, that is, the bottom of the car—

The Witness: Yes.

The Court: —the top of the station wagon was at the hood, at the beginning of the hood?

The Witness: Approximately two and a half to three foot.

The Court: Did you measure it, or have you ever measured them?

The Witness: No, sir, I never have measured them.

The Court: You never have. Do you know how far above the surface of the ground, that is, the surface of the pavement, the bottom of the body of the semi-trailer was?

The Witness: I took that into consideration.

The Court: Do you know how high it was?

The Witness: No, sir. It is higher than—it is higher than a hood.



(Testimony of William Edward Burgess)

The Court: You don't know how high it was? [301]

The Witness: No, sir.

The Court: You don't know how high. Did the other witness measure that?

Mr. Deutz: I don't believe he did. You can ask him.

The Court: Well, ask him here.

Lieutenant Becker, do you know what I am talking about?

Mr. Becker: Yes, sir.

The Court: I am talking about from the surface of the pavement to the bottom of the truck.

Mr. Becker: That is right. I did not measure it.

The Court: Did you measure the station wagon?

Mr. Becker: No, sir.

The Court: All right.

#### Redirect Examination

By Mr. Deutz:

Q. Mr. Burgess, when you spoke of the top of the hood of the station wagon being about two and a half to three feet above the ground, did you refer to that in its damaged condition, or in its natural condition?

A. Natural condition.

Mr. Deutz: That is all.

Mr. McKnight: That is all.

The Court: Call the next witness. [302]

Mr. Deutz: Mr. Segren. Mr. Segren, would you wait for a moment, please?

All right, Mr. Segren. Go ahead.

PETER G. SEGREN,

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: And your full name?

The Witness: Peter G. Segren, 709 Gary, San Francisco.

Direct Examination

By Mr. Duetz:

Q. Mr. Segren, on or about July 24, 1946, were you a member of the United States Naval forces?

A. I was.

Q. And what was your rank at that time?

A. Lieutenant.

Q. And where were you assigned to duty at that time?

A. The Navy Recruiting Station, 98 Golden Gate, San Francisco, California.

Q. Lieutenant Segren, do you recall the happening of an accident at or near Madera, California, on July 24, 1946?

A. I do.

Q. Were you assigned as an investigating officer [303] covering that accident?

A. I was.

Q. Did you go to Madera to further that investigation?

A. I did.

Q. Upon your arrival at Madera, did you have occasion to examine the two Ford vehicles, the station wagon and the Ford sedan at Madera?

A. I did.

Q. Do you recall where that examination took place?

A. It was at a Chevrolet garage and yard alongside of it.

(Testimony of Peter G. Segren)

Q. Now, Mr. Segren, you have heard Mr. Burgess testify as to the damage, as to those two vehicles, is that correct? A. I did.

Q. After hearing the testimony of Mr. Burgess, would you in testifying on the same damage to those vehicles vary your testimony in any way?

A. The only thing was that all the tires on the Ford sedan were smooth.

Q. They were all smooth? A. All smooth.

Q. Now, I would like to ask you this: Did you have occasion to notice the left rear fender of the Ford sedan?

A. I did. [304]

Q. And on the left rear fender of that Ford sedan, did you notice any paint marks foreign to the color of the sedan itself? A. Not on the fender.

Q. Not on the fender? A. No, sir.

Q. Did you notice them on any part of the body of that car?

A. It was on the body above the fender I noticed a mark.

Q. Above the fender. Was that above or below or on the level with the rear window of that sedan?

The Court: Well, here is a picture of it. There are so many pictures here, it is like playing solitaire.

Mr. Duetz: Here we are.

The Court: Here we are.

Q. By Mr. Duetz: I show you Plaintiff's Exhibit 3, and ask you whether that is the left side of the Ford sedan, as you recall it? A. It is.

(Testimony of Peter G. Segren)

The Court: Oh, it has been testified that that was taken at the time of the accident. Now, will you indicate on that picture where you saw what you are talking about now?

The Witness: I saw a crease up here (indicating). [305]

The Court: Did you measure that above the ground?

The Witness: No, I didn't.

The Court: Did you measure the truck body above the ground?

The Witness: No, I didn't. I never saw the truck.

The Court: You never saw the truck?

The Witness: No, sir.

Q. By Mr. Deutz: How far from the upper extremity of that automobile did you notice that crease?

The Court: How far from the upper extremity?

Mr. Deutz: Yes, from the top, how far down from the top?

A. I would estimate it was about two and a half feet from the top.

The Court: Two and a half feet from what?

The Witness: From here to here (indicating on photograph).

Mr. Deutz: Oh, that is on an angle; that is two and a half feet from the—

The Court: Well, taking the extreme top, carrying toward the rear at right angles and measuring down.

Mr. Deutz: That is about on a 45-degree angle.

The Witness: It was two and a half feet from the door jamb of the rear door.

(Testimony of Peter G. Segren)

Q. By Mr. Deutz: Is that correct? This is the door [306] jamb of the rear door, right at this point (indicating)? A. Yes.

Q. Now, the top juncture of that was at about two and a half feet down on an angle, where you found the indentation—where you found the foreign paint marks, is that right? A. That is right.

Q. What was the color of those paint marks?

A. They were a cream color.

Q. They were a cream color. Did you see the Golden State truck while you were there? A. I did not.

Mr. Deutz: That is all.

#### Cross-Examination

By Mr. McKnight:

Q. And you saw none of that cream colored paint below the position that you have shown his Honor upon the picture there, where that crease is?

A. No, I didn't.

Q. And you were examining it and looking at it and discussing it with these other Navy men at the time, were you not? A. That is right.

Q. So you have a pretty definite memory of it, don't [307] you? A. I have.

Mr. McKnight: That is all.

#### Redirect Examination

By Mr. Deutz:

Q. Mr. Segren, in your examining of the station wagon, could you tell whether there was any paint of the color similar to that you saw on the Ford sedan, that cream colored paint, at any portion of the—Let me rephrase that question. Strike that question, please.

(Testimony of Peter G. Segren)

Was the cream colored paint that you found above the left rear fender of the Ford sedan similar to any portion of the painted color of the Ford station wagon?

A. Not to my knowledge.

Q. Was it similar to any of the natural colors with which that Ford station wagon was painted?

A. Not to my knowledge.

Mr. Deutz: That is all.

Re-Cross Examination

By Mr. McKnight:

Q. Wasn't there a yellowish white trim on the station wagon?

A. No, sir. The only trim was woodwork being [308] varnished.

Q. You say none of the trim was a yellowish white on the station wagon, is that your testimony?

A. That is my testimony.

Mr. McKnight: That is all.

The Court: The woodwork, was it natural color and the varnish was colorless?

The Witness: Yes, sir.

The Court: So that if the varnish left anything, it would be colorless?

The Witness: That is right.

The Court: All right. You may step down. The next witness.

Mr. Deutz: Mr. Northridge.

## EDWARD NORTHRIDGE,

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Edward Northridge.

The Clerk: And your address?

The Witness: 615 Gonzalez Drive, San Francisco. [309]

## Direct Examination

By Mr. Deutz:

Q. Mr. Northridge, on July 24, 1946, were you a member of the Naval forces of the United States?

A. I was.

Q. And where were you stationed?

A. I was officer in charge of the San Francisco Recruiting District, which comprises the northern part of California.

Q. And does that include the Fresno area?

A. It does.

Q. What was your rank at that time?

A. Lieutenant, U. S. Navy.

Q. Were you assigned to investigate an accident that occurred at Madera on or about July 24, 1946?

A. Well, I assigned Lieutenant Segren to investigate it.

Q. Did you accompany Lieutenant Segren to Madera to make the investigation?

A. I followed him about four hours later.



(Testimony of Edward Northridge)

Q. While you were at Madera, did you have occasion to examine the Ford station wagon and the Ford sedan involved in this accident?

A. I did. I believe it was on the 26th of July.

Q. When you made your examination? [310]

A. And it was jointly made with Lieutenant Segren, Mr. Burgess and Sergeant Gill, sir, at the time.

Q. Did you examine the tires of the Ford sedan at that time? A. I did.

Q. And what was their condition?

A. They were smooth. There was little tread on the edges, but the center of the tires were smooth.

Q. And were some of those tires deflated?

A. Yes. There was one lying in front of the Ford sedan, and I believe the left rear tire was deflated.

The Court: On the car?

The Witness: I don't believe that it was on the car at the time.

The Court: It may be stricken.

The Witness: I think that was the one lying there.

The Court: Well, you didn't see it taken off?

The Witness: I did not see it taken off, no, sir.

Q. By Mr. Deutz: Did you notice the right front tire of that vehicle?

The Court: You saw a tire lying there?

The Witness: The right front tire was deflated.

Q. By Mr. Deutz: It was flat?

A. It was flat. The left front tire was inflated.

Q. I see. [311]

A. And the right rear tire was inflated. The left rear tire was not on the Ford sedan.

(Testimony of Edward Northridge)

Q. All right. Now, on the Ford sedan, calling your attention to—Let me see that picture again.

The Court: That picture.

Q. By Mr. Deutz (continuing): —Plaintiff's Exhibit 3, which is a view, I believe, at the left side of the Ford sedan. Did that left side of the Ford sedan so appear to you at the time of your examination?

A. Yes.

Q. I call your attention to the left rear fender of that Ford sedan and to its damaged condition, and I would like to ask you whether on examination of the left rear fender or any parts adjacent thereto you discovered any color of paint foreign to the natural color of that vehicle?

A. Yes. There was a streak of cream colored paint, I believe, just at the point where it seems creased in this picture.

Q. Would you identify that with just a little cross?

A. There was a streak of cream colored paint in through there (indicating).

The Court: Right back of the rear window.

The Witness: And also there was a—not a streak, but apparently irregular blotches of cream colored paint practically on this left top corner of the Ford sedan. I believe [312] there were two or three.

Q. By Mr. Deutz: Now, that was just behind and above the last rear window on the left side of the vehicle?

A. That is right.

Q. And there were also paint marks below that?

A. That is right.

Q. Below that window?

A. There were.

(Testimony of Edward Northridge)

The Court: Did you make any examination of the Ford station wagon, at any time, to see whether or not there was any paint—

The Witness: I did.

The Court: —or blotches or streaks or marks or remnants?

The Witness: I did. I took particular notice.

The Court (continuing): Foreign to the original and natural paint of the car?

The Witness: I did.

The Court: Where?

The Witness: This was at the parking—You are talking about the Ford station wagon?

The Court: I am talking about the Ford station wagon.

The Witness: I examined all the windows—I mean, I examined the fenders.

The Court: Did you examine the hood? [313]

The Witness: The hood was up.

The Court: Did you examine it?

The Witness: I examined the hood, not too carefully, perhaps.

The Court: But not for paint marks?

The Witness: I didn't notice any paint marks.

The Court: Did you examine it for paint marks?

The Witness: I was looking for paint marks, but I noticed none.

The Court: And you noticed none. Did you examine the radiator?

The Witness: Of the station wagon?

(Testimony of Edward Northridge)

The Court: Of the station wagon or any portion of the right side of the car?

The Witness: I believe we spent about—

The Court: For paint marks?

The Witness: For paint marks; I was looking for paint marks, but I noticed none on the right-hand side of the Ford station wagon.

The Court: Did you notice some on the left?

The Witness: No. The left front fender was practically intact.

The Court: Well, you didn't notice any?

The Witness: I noticed none on the fender.

The Court: Did you notice some green paint marks on [314] the fender?

The Witness: No, I didn't. I was looking for green paint.

The Court: You were looking for green. You weren't looking for cream?

The Witness: Both.

The Court: Both, but you didn't see any?

The Witness: No, I would say not.

The Court: Would you say there wasn't any?

The Witness: I didn't notice any.

The Court: You wouldn't say there wasn't any?

The Witness: There may have been some.

Q. By Mr. Deutz: To the best of your knowledge, after a thorough examination of the station wagon, you didn't find any foreign color at any part thereon?

A. I found none. Pardon me. My investigation and inspection was not too thorough. It was confined to about a half hour period.

(Testimony of Edward Northridge)

Q. But you spent a half hour examining that vehicle?

The Court: He just answered that.

Mr. Deutz: All right.

Q. Now, you have heard the testimony of Mr. Burgess here in Court? A. Yes, sir, I have.

Q. After hearing his testimony, would you vary the [315] testimony in any way from that which was given by Mr. Burgess, in regard to the damage to the two vehicles involved here; in other words, would your testimony be the same?

A. Why, except as to the height of the hood.

Q. Yes, but I mean in other respects.

A. In other respects, it would be the same.

The Court: How high is the top of the hood of the station wagon?

The Witness: I did not measure it.

The Court: Well, did you ever measure one?

The Witness: I did not measure it, but I can approximate it.

The Court: Well, I know approximately, too, but you never measured it?

The Witness: That is right.

The Court: Did you measure the bottom of the bed of the tractor—You never saw it?

The Witness: There was no opportunity to see it.

The Court: Thank you. Any questions?

Mr. McKnight: No, your Honor, no questions.

The Court: All right. You may step down.

Mr. McKnight: Could I ask Mr. Segren a question? Could I recall him—

The Court: Surely. [316]

Mr. McKnight: —for further cross examination?

PETER G. SEGREN,

called as a witness by and on behalf of the Defendant, having been previously duly sworn, resumed the stand and testified further as follows:

## Re-Cross Examination (Continued)

By Mr. McKnight:

Q. Mr. Segren,—May I have this photograph that we have used so consistently?

The Court: That is No. what?

Mr. McKnight: 3, your Honor.

The Court: 3.

Q. By Mr. McKnight: Mr. Segren, I understood you to say that the only place that you saw this cream colored paint in your examination was in this crease right here (indicating on photograph)?

A. That is right.

Mr. McKnight: Counsel, do you mind if I make a pencil arrow pointing to the crease so the record will show the crease that he is speaking about?

Mr. Deutz: I have no objection. I think we should have started out, however, with the other testimony—

Mr. McKnight: Well, if you have no objection, I will [317] do it so that the record will show the crease that the witness pointed to, your Honor, and you watch me, Mr. Witness, so I get it right.

The Court: Let the witness do it.

Mr. McKnight: All right.

(Testimony of Peter G. Segren)

The Court: And it will be his testimony and not yours.

Q. By Mr. McKnight: You will make the arrow point to the crease that you had in mind.

(The witness places an inked marking on Plaintiff's Exhibit No. 3.)

Mr. McKnight: Now, instead of making an arrow pointing to it, you have outlined it in ink.

The Witness: Yes, sir.

Q. By Mr. McKnight: The crease itself?

A. That is right.

Mr. McKnight: Let me see if I can get this thing put on here. No. It is on there. That is all. Let me show this to your Honor so you will know what we are talking about.

The Court: I know what you are talking about.

Mr. Deutz: Would you like to mark that photograph according to the testimony of the others, or shall I recall the other witnesses to the stand?

Mr. McKnight: I am only interested in doing what I did.

Mr. Deutz: All right: I will recall Mr. Burgess. [318]

Come back to the stand, please. We will get them all marked in here while we are at it.



WILLIAM EDWARD BURGESS,

recalled as a witness by and on behalf of the Defendant, having been previously duly sworn, was examined and testified further as follows:

The Court: Well, you better get some other kind of mark, then.

Mr. McKnight: I was going to suggest that, your Honor, that he put another mark on it.

The Court: Have you got some pink ink?

Mr. Deutz: I am afraid not. What have you?

Mr. Reid: Purple ink.

Mr. Deutz: We have three of them.

Direct Examination

By Mr. Deutz:

Q. Will you mark on here the white spots that you observed,—the white spots right at the top there?

The Court: And when you do that, draw a little line over to the right of the picture and mark it with your initials, will you?

Mr. Deutz: In purple. Go ahead. [319]

The Witness: I will initial it, your Honor.

The Court: You indicate the spot you are talking about.

The Witness: Yes.

The Court: And then you draw a line over and just put your initials there.

The Witness: You want the crease?

Mr. Deutz: We want the white paint marks, the cream paint marks.

The Court: Now, which do you mean, white paint marks or cream paint marks?

Mr. Deutz: Cream paint marks.

(Testimony of William Edward Burgess)

The Court: Or varnish paint marks?

Mr. Deutz: We want the cream paint marks.

The Court: All right.

The Witness: These are the paint marks. (The witness draws an inked line on Plaintiff's Exhibit 3.)

Q. By Mr. Deutz: Just put your initials on there. (Witness complies.)

Q. I will ask you this question, Mr. Burgess, in relation to the testimony as to the station wagon in this case. I believe you testified that there was some egg yolk colored varnish on it.

The Court: Did you testify it was egg yolk colored varnish or egg yolk colored paint? [320]

The Witness: That is the color of the wood. Varnish is transparent; that shows through. If varnish comes off on anything, you don't see anything but peelings.

The Court: You don't see anything—Did you see peelings?

The Witness: No, sir.

The Court: You saw egg yolk color?

The Witness: No, sir, I didn't see any egg yolk color. I was describing the wood frame of the station wagon. It is bleached in white or egg yolk white.

Q. By Mr. Deutz: That is the natural color of the wood?

A. That is the natural color of the wood, and to protect that against weather, it is shellacked, stained and varnished.

The Court: You did not find any of those colors on this car?

The Witness: No, sir. You would have to find wood chips.

The Court: Do you want to cross examine Mr. Northridge?

Mr. McKnight: No, your Honor. It is all right, I mean very well covered.

Mr. Deutz: Will you take the stand, please? [321]

EDWARD NORTHRIDGE,

recalled as a witness by and on behalf of the Defendant, having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued)

By Mr. Deutz:

Q. Now, Mr. Northridge, I will ask you to identify the—

The Court: What color have you for him?

Mr. Deutz: Cream.

The Court: No, I mean ink?

Mr. Deutz: Well, we are going to have to use the purple again.

Mr. McKnight: I suppose we could use a pencil.

Mr. Deutz: It won't work on that slick surface.

Mr. McKnight: Let's see. Yes, it will.

Mr. Deutz: All right, try a pencil.

The Court: I want some mark on it that the Circuit Court will be sure to read.

Q. By Mr. Deutz: I want you to mark on there so that it will indicate where you found cream colored paint on the plaintiff's vehicle?

A. As I mentioned before, there were splotches up in this particular corner, up here (indicating on Plaintiff's [322] Exhibit 3).

(Testimony of Edward Northridge)

Q. This is the approximately location of the X which has just been made there by Mr. Burgess?

A. That is right. There were some cream colored splotches, irregular shaped.

Q. Will you just put a couple of X's there, then?

A. It was dented.

The Court: You can just draw a line, if it was the same spot, draw a line over to it and put your initials there.

Mr. Deutz: That isn't showing, I am afraid.

The Witness: I have a solid black ink here.

Mr. Deutz: All right. Draw a circle, where you found that spot.

The Witness: Just around that area there (indicating).

The Court: Draw a line over to the right and put your initials there. That is where you saw the cream colored splotches?

The Witness: Cream colored splotches there.

Mr. Deutz: And for the record, that circle happens to circle the X just previously made by Mr. Burgess.

Mr. McKnight: By Mr. Burgess.

Q. By Mr. Deutz: Will you point out where you found any other splotches on that paint?

A. To the best of my recollection, there may have been [323] possibly more than one streak here where I just noticed the major streak. What that was above here, I would not be sure. I think that streak ran somewhere like that (indicating on Plaintiff's Exhibit 3).

The Court: Draw a line, now.

Mr. Deutz: Draw a line.

(Testimony of Edward Northridge)

The Court: And put a figure "2" after your initials.  
(Witness complies.)

The Court: That is it. And what color was that?

The Witness: Cream color.

The Court: Cream color, the same color as the other one?

The Witness: The same color as the other one.

Mr. Deutz: That is all.

The Court: All right. The next witness.

Mr. Deutz: Mrs. Cook.

### MAUDE COOK,

recalled as a witness by and on behalf of the Defendant, having been previously duly sworn, was examined and testified further as follows:

The Court: You were sworn in this afternoon. You have changed your dress?

The Witness: I did.

The Court: Your name is Maude Cook, is that right? [324]

The Witness: That is right.

### Direct Examination

By Mr. Deutz:

Q. Mrs. Cook, this afternoon you testified that on August 5, 1946, in the morning of that day, you interviewed, in the presence of Mr. Walter Chandler, Mr. Ernest Uarte, the plaintiff in this case, at the Dearborn Hospital, Madera, California; is that correct?

A. Yes.

(Testimony of Maude Cook)

Q. At that time I asked you this afternoon certain questions as to Mr. Uarte's condition. Now, in your report or in your statement that you took at that time, I believe there were some questions asked by Mr. Chandler as to the general background of Mr. Uarte, specifically he asked him his name, address, and so forth.

I would like to have you read to me—First of all, I will ask you, that statement that you have there, was that statement taken down by you at the time of the interview in question? A. Yes.

Q. It was taken down in shorthand?

A. In shorthand.

Q. Was it transcribed by you? A. Yes. [325]

Q. And it is true and correct? A. Yes.

The Court: Do you have any objection to this whole statement going in?

Mr. McKnight: Not at all.

The Court: All right. Put it in evidence. Have you got it transcribed there?

The Witness: Yes. This is the only copy that I have.

The Court: Well, you can probably get it back, the whole thing.

Mr. Deutz: I would just like to have about one page read from that.

Mr. McKnight: I think the whole statement should be in evidence if any part of it is in evidence, and I would have to ask her to read it all if we didn't do it this way, your Honor.

The Court: Just take out his statement there, tear it out. You still have your shorthand notes?

(Testimony of Maude Cook)

The Witness: I still have my shorthand notes, yes.

The Court: Now, that which you have handed to counsel, let us mark it here as Government's Exhibit H, and it is a true and correct transcription of true and correct shorthand notes that you took of the statements made by Mr. Uarte, the plaintiff, on the time and occasion that you have just [326] mentioned?

The Witness: Yes.

Q. By Mr. Deutz: Now, Mrs. Cook, you have already stated that this statement is a true and correct copy of the statement given to you orally by Mr. Uarte on that particular date? A. Yes.

Q. That is, August 5, 1946? A. Yes.

Q. In the presence of Mr. Chandler? A. Yes.

Mr. Deutz: Now, your Honor, I would like to read just short portions of this into the record. They are very short.

The Court: You can put those all in evidence and you can use that in argument. Have you any more questions to ask her?

Mr. Deutz: No. I think that will be all.

(The statement referred to was marked Defendant's Exhibit H, and was received in evidence.)

The Court: Do you want to ask her any questions?

Mr. McKnight: No, your Honor.

The Court: Oh, by the way, where was Uarte then?

The Witness: He was in bed in the Dearborn Hospital.

The Court: What was his condition that you observed?

The Witness: When I walked in, he was awake. [327]



(Testimony of Maude Cook)

The Court: He was awake?

The Witness: And we talked to him.

The Court: Did he have any apparatus on?

The Witness: Yes, I believe he had some sort of  
a cast or something.

The Court: A derrick?

The Witness: A derrick, yes.

The Court: Or something like that.

The Witness: As I remember it, he did.

The Court: Bandages?

The Witness: I believe so. It seems to me his  
face was all bruised.

The Court: His face was bandaged?

The Witness: I don't remember the bandages.

The Court: Bruised?

The Witness: Bruised.

The Court: Did he have bandages that you noticed  
on the chest?

The Witness: I didn't notice.

The Court: Or anything else?

The Witness: I didn't notice that.

The Court: Did you ask him if he wanted to talk,  
or somebody else?

The Witness: Well, we were informed that he was  
able to talk, and we just went in and started to talk  
to him, and [328] he talked to us in a coherent manner.

Q. By Mr. Deutz: Did Mr. Uarte promptly reply  
to your questions? A. Yes, he did.

Q. And Mr. Uarte seemed to understand the import  
of your questions?

Mr. McKnight: To which we object. It calls for  
a conclusion of the witness.

(Testimony of Maude Cook)

The Court: It calls for a conclusion. Is there any cross examination of this witness?

Mr. McKnight: No, your Honor.

The Court: All right. You may go home and change your dress again.

The Witness: Thank you, your Honor. I will do that.

Mr. Deutz: Mr. Chandler.

Mr. McKnight: If there is any question about this statement, it seems to me clear in the evidence the conditions under which it was taken. It is in evidence without objection.

The Court: All right. Let him call his witness. It is his case. Let him try it. [329]

#### WALTER CHANDLER,

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: And your full name?

The Witness: Walter Chandler.

The Clerk: And your address?

The Witness: 219 South "D" Street, Madera, California.

#### Direct Examination

By Mr. Deutz:

Q. Mr. Chandler, what is your occupation?

A. Attorney at law.

Q. And on July 24, 1946, was that your occupation?

A. Yes. I was Deputy District Attorney of the County of Madera, at that time.

(Testimony of Walter Chandler)

Q. Now, Mr. Chandler, you had occasion to take certain testimony on the night of July 24, 1946, at the scene of this accident in question?

A. If you are referring to this Uarte accident, yes, sir.

Q. Yes, sir; that is right. Now, on August 5, 1946, did you go to—

The Court: What do you expect to prove by this witness? This is just a corroboration? [330]

Mr. Deutz: Just impeachment testimony here.

The Court: Just corroboration of the fact he was there, he took the witness' statement and he made this statement and the other statements that have been used?

Mr. Deutz: That is right, and that he elicited certain statements from Mr. Uarte at that time.

The Court: Other than what is already in evidence?

Mr. Deutz: They are in evidence in the form of this document, your Honor.

The Court: Yes.

Mr. Deutz: They have been previously testified to by him and by this document I would like to prove, and I can prove by this document, that at that time Mr. Uarte, despite a lapse of memory, did recall who he was, where he lived, what his family relations were, and where he was employed, which was something he could not testify to today.

The Court: It is in the statement, is it not?

Mr. Deutz: Yes, that is correct.

The Court: Why take up time?

Mr. Deutz: Very well. It is just corroborative.

The Court: It is there.

Mr. Deutz: That is all, Mr. Chandler.

(Testimony of Walter Chandler)

The Witness: Very well, sir.

The Court: The statement is in evidence.

Mr. Deutz: Yes, sir. [331]

The Court: By the way, I would like to ask the witness a question. You may answer it there, Mr. Chandler.

The Witness: Yes, sir. Thank you, sir.

The Court: According to this statement, you stated, "It might be well to swear you in as a witness, as far as the Navy is concerned." Were you then attached to the Navy?

The Witness: No, sir. At that time the matter had been investigated diligently by Navy officers, various Navy officers, who did come down there and had been there at Madera for several days following the accident, but during all of that time they were unable, so far as I knew, to obtain an interview with this witness, and they had requested me to obtain any statement that I might be able to obtain and to provide that information for them.

The Court: Well, your purpose in interviewing him was to secure the statement for the Navy?

The Witness: No, sir.

The Court: Or was it to secure his statement in connection with your public duties?

The Witness: That is correct, sir. It was only incidental.

The Court: All right.

The Witness: I thought that possibly they might wish the statement sworn to and we had that power.

The Court: All right. All right, your next witness [332]

Mr. Deutz: The defendant rests, your Honor.

The Court: Is there any rebuttal?

Mr. McKnight: There might be one or two witnesses. May I glance at this statement, your Honor?

The Court: Oh, sure.

Mr. McKnight: I call Mr. Layana.

The Court: You were sworn before: You may take the stand.

CEFERNEO LAYANA,

recalled as a witness by and on behalf of the Plaintiff, in rebuttal, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. McKnight:

Q. Mr. Layana, after you woke up and saw these lights in front of you and the vehicle in which you were riding collided with that vehicle in front of you, do you have any memory—Or, I will withdraw that.

To your knowledge, was there any subsequent collision between the vehicle that you were riding in and any other vehicle, was there another crash after that, that you have any memory of?

A. No. There was just the big crash. Then there [333] was a little bit of a one when we come to a stop.

Q. That was when you struck the car in which the colored people were riding? A. That is right.

Q. You remember no crash in between there?

A. I don't remember there.

(Testimony of Ceferneo Layana)

Q. Did you see this automobile in which you were riding within the next two or three days there at the garage?

A. Yes; we went over there on the following day.

Q. Did you see the damage on the left rear corner of that vehicle? A. Yes, I did.

Q. Do you remember seeing any cream colored paint at that damaged portion?

A. That is one thing I never noticed.

Q. You didn't notice it.

Mr. McKnight: That is all. That is all.

The Court: Do you wish to cross examine?

Mr. Deutz: Just a moment, please. That is all.

Mr. McKnight: That is all, Mr. Layana. No other witnesses, your Honor.

The Court: The plaintiff rests?

Mr. McKnight: The plaintiff rests.

The Court: All right. Do you want to argue it?

Mr. McKnight: Yes. We will wish to argue it. [334]

Mr. Deutz: Yes.

Mr. McKnight: Does your Honor wish the argument tonight? It is perfectly all right with me.

The Court: Well, I have all these things spread out here now. I know what they are all about. I don't know how long it would take me to get them spread out again after Mr. Reid gets through trying two jury cases tomorrow or the next day.

Mr. Deutz: At this time I would like to renew the motion previously made.

The Court: Very well.

Mr. Deutz: Do you wish argument on the motion?

The Court: Make your motion. I just want to get a picture I can look at here. I thought I knew where they were. I will find it. Are they all up here, Mr. Clerk, the pictures?

Mr. Deutz: With the exception of the sketch, I believe they are, your Honor. I think you have them all.

The Court: No. There is another picture. Make your motion.

Mr. McKnight: May I make a suggestion, your Honor, and counsel. We have this map here which will require taking photographs of.

The Court: It wasn't used.

Mr. McKnight: It wasn't used in any way, shape or form. [335] That is Plaintiff's Exhibit No. 1. I wonder if I might have the privilege of withdrawing it as an exhibit so as to keep the record straight. It won't be necessary to use it.

Mr. Deutz: We will so stipulate.

The Court: Very well; it is withdrawn.

(The map referred to, previously marked Plaintiff's Exhibit No. 1 for identification, was withdrawn.)

Mr. Deutz: I would like to move that this action by the plaintiff against the United States be dismissed with prejudice, on the ground that there has been no showing of negligence on the part of the defendant or its employees. There has been only one contention upon which the plaintiff has established liability and that was merely a statement which Mr. McCoy himself had indicated was inadvertent.



The Court: No. The plaintiff hasn't made his contentions yet. I don't know what his contentions will be.

Mr. Deutz: Well, taking any contention, and no contentions have definitely been made, it is the position of the government that there is not one iota of evidence here to actually establish that the government vehicle was negligent in any manner whatsoever.

There is no definite evidence that the government vehicle ever came in contact with the vehicle of the plaintiff, and without such contact, there is absolutely no way by which negligence could be established as far as the government is [336] concerned.

The Court: No. With that latter portion, I don't quite agree, unless there is absolutely—oh, you are speaking of contact?

Mr. Deutz: That is right, your Honor. There is no showing of any—

The Court: Well, I don't know. I have heard that argued many times, but I think—

Mr. Deutz: The only eye-witness has stated—

The Court: —from my experience in life and practical experience in driving automobiles, you might show that there might be no contact at all between automobiles, and still they might be at fault, because how many times have you and I been driving home, for instance, and the fourth car ahead, some lady has decided to turn left suddenly and held out her hand, and there is an accident—it is her ultimate fault. She is the approximate cause of the accident, but you have to pay the bill for bumping into the back end of the fellow in front of you who has the third car back of her.

Mr. Deutz: Your Honor, there is not one speck of evidence in this case that the government car was any-

thing except the second car in the procession coming down upon the highway.

There is no evidence that the government car was ever abreast of Mr. Uarte's car. [337]

There was the testimony of Mr. McCoy that the first car was the car that swerved and was the car that hit his vehicle. That first car has been identified as Mr. Uarte's vehicle. As the government's car was following or trailing Mr. Uarte's car, regardless of what he may have done, as long as he was behind Mr. Uarte, as long as he did not come in contact with Mr. Uarte and do something to injure him, at no time was he in position to impede the progress of Mr. Uarte's car or to endanger it or to do any act which might cause Mr. Uarte alarm.

All the evidence shows that the Navy vehicle was following Mr. Uarte, was never abreast or ahead of that vehicle. That is the reason I stress the point of contact, because that is the only possible way in which the Navy vehicle could have jeopardized the position of Mr. Uarte, would be by contact, because it was never ahead, it was never in front or an obstacle to Mr. Uarte's car at any time.

The Court: No. That isn't the only way, counsel, that he might have jeopardized it. A person who is driving an automobile and using all diligence and care, even using not just ordinary care but the utmost care in approaching an oncoming vehicle, if someone might attempt to pass them—

Mr. Deutz: There is no evidence to that extent in this case, your Honor.

The Court: There is testimony from which one might [338] infer, but if someone might attempt to pass them without any contact at all, the person driving the

car, in order to avoid an accident, in order to permit the car which is attempting to pass to consummate the passage before a head-on collision, may suddenly put his brakes on—

Mr. Deutz: Yes, your Honor—

The Court: —in order to prevent that. So you can't say that that is the only way,—

Mr. Deutz: No, your Honor, but—

The Court: —that an accident can happen.

Mr. Deutz: —such an exception—

The Court: Of course, there was the suggestion that maybe the Navy car clipped them on the rear end or clipped them on the front end.

Mr. Deutz: Such an exception might be worthy of consideration, your Honor, had there been any evidence of the fact that the Navy vehicle was at any time abreast of Mr. Uarte's vehicle or had there been any evidence of any damage to Mr. Uarte's vehicle having been made by a clipping or a side-swiping or any contact between the Navy vehicle and the Uarte vehicle.

Now, there is no such evidence in the record. There is no evidence in the record here to indicate that—

The Court: It all depends on the way you look at it. You mean the way you look at it, there isn't any. [339]

Mr. Deutz: The plaintiff put on his case and put on no evidence whatsoever as to the damage of the various vehicles, as to their character. The government has put on certain evidence in that regard, and I believe there was nothing in the government's evidence that would leave any inference that there had been any contact by side-swiping.

There was direct evidence by the government that the damage was caused by the hit on the front or side of the

Golden State truck, and from the physical evidence and the chart, which your Honor has seen, which, I think, is Exhibit 13, it is quite obvious that the government car never left the southbound lane on that highway.

The Court: Never left it?

Mr. Deutz: Never left it.

The Court: Well, counsel, on this exhibit here, I would like to have you explain to me—This is No. 6, this is a picture taken looking south the way this car was traveling, considering it in connection with the picture at the back end of the trailer and the position of these automobiles and the fact that the hood of this station wagon is up, then, and it flies right around from where it might have hit this.

In other words, nobody knows what happens in these accidents, they are so fast, and you say that it never left a lane of traffic. It looks to me like it just hit that [340] truck, hit it on its side here and went clear around it, and skidded under the semi-trailer part, which pulled that hood right up, and there it sits.

Mr. Deutz: Skidded under the trailer, your Honor?

The Court: With the wheel under. You see, the hood is up in the air like that.

Mr. Deutz: Yes.

The Court: Something pulled that back.

Mr. Deutz: That is right.

The Court: It looks to me like it just got under the corner of that semi-trailer there.

Mr. Deutz: That is quite possible, that is quite possible.

The Court: It may be so. Not that that is any evidence that the government is at fault, but it would seem

to me that it would refute the proposition that this station wagon never left this south lane of traffic. It seems very improbable to me, too, it being a light station wagon compared to a 55,000-pound truck which did leave the lane of traffic which it was going in and found itself crosswise and over on the other side of the road, and did leave it, but a light automobile like that did not leave it.

Mr. Deutz: I would like to point this out, if your Honor please: If you notice the photostats there of Mr. Deming's drawings made at the scene of the accident, you [341] will notice that the station wagon lies some distance north of the position in which the Golden State truck is jack-knifed across the highway. Now, if that vehicle at any time had been south of that jack-knifed truck, I think it would be fairly obvious that it could never have gotten around that enormous vehicle parked, planted right across the highway.

The Court: I do not think there is any doubt but what that station wagon hit this truck head-on, on the nose. The Naval officer's testimony was that there were two evidences here of impacts, one of them was right in the middle, which you see—

Mr. Deutz: That is right.

The Court: —here (indicating), and the other one sheared off the right front wheel and on around the side. Now, it seems pretty impractical to me that it could have been the station wagon that only did this to the truck and hit it, only hit it here in the middle, and still could have so completely demolished the station wagon and so slightly demolished it compared with the Ford sedan. It seems to me the Ford sedan hit one of them and bounced around.

Mr. Deutz: And bounced—

The Court: And the other came along, hit it, and it sort of sheared it off, and they were going so fast I don't think they could have stopped. [342]

Mr. Deutz: I think it is quite obvious that the station wagon hit that right front fender of the Golden State vehicle, but it is also quite obvious from Mr. McCoy's testimony that the Uarte car skidded across the highway first, that that car hit somewhere on the front end of the Golden State truck. It is also quite obvious from the—

The Court: I wasn't very much impressed with the variety of Mr. McCoy's testimony. I don't think he knew which car came across there and hit him first.

Mr. Deutz: Well, the physical situation, I believe, your Honor, would tend to show that it would have to be the Uarte car.

The Court: I can't say that.

Mr. Deutz: For the simple reason that this other car—

The Court: I don't think he knew which car came across there. He saw those lights and they all merged together, and the next thing he saw was a car.

Mr. Deutz: Well, regardless of that, your Honor—

The Court: He was up in the air. He tried to grab his wheel. He was worried about the car coming. He was worried about his truck. He was worried about the "boss," and that was his wife sitting beside him, and I think his testimony is completely unreliable as to what he saw, which car it was.

Mr. Deutz: Well, regardless of what Mr. McCoy actually [343] saw, we do know this: That the Uarte car got past the Golden State truck, in other words, it was south of the Golden State truck, so it went by.



The Court: That is right.

Mr. Deutz: And after Mr. McCoy jack-knifed his truck, nothing could have passed him in that lane of traffic, and the station wagon did not pass him, for the simple reason that when Mr. McCoy—

The Court: No. I think he passed him before. As a matter of fact, I wouldn't be surprised but what it wasn't the station wagon that got out of line and came along and smacked him, then.

Mr. Deutz: If that were so, your Honor, then how would the station wagon get back north of the Golden State truck which is jack-knifed?

The Court: The only way I can answer that is that I tried another accident case one time, where a lady was sitting alone in her automobile; she was struck by another car; her car went to the corner of the curb and came to rest against a telephone post and she was found dead under the car and both doors were locked. Now, nobody can explain it. This happened too fast, but I think I can see how this might have happened, that the station wagon was going so fast that it hit this car and the truck, whirled around and went around. The skid marks here are inapplicable unless they were made by [344] the truck or were made by the station wagon. So I think the station wagon came around and whirled around there.

Mr. Deutz: Which skid marks?

The Court: All the skid marks.

Mr. Deutz: The skid marks on this Exhibit 13 are here on the outside of the highway.

The Court: That is right, and the station wagon had to get on the outside of the highway.



Mr. Deutz: And that is the position, if you will notice on the first page of Exhibit 13, is the position where the truck and trailer came to rest, and in both instances it is the skid marks of the truck and trailer.

The Court: Not precisely.

Mr. Deutz: Which are directly opposite of the railroad signal, which you will notice as a white block.

The Court: Yes, I notice that.

Mr. Deutz: The position of the truck on this map is directly opposite the railroad signal, and on the second diagram—

The Court: Do you think the truck went off here and skidded around?

Mr. Deutz: That is, the truck came to rest right where the skid marks are.

The Court: Not where the skid marks are, but on the pavement opposite the skid marks. [345]

Mr. Deutz: That is right. On this diagram, where the skid marks are, in this position (indicating) and here (indicating), they are exactly at the position where the truck came to rest, as illustrated in the diagram here, so that truck came to rest there. So, regardless of the credibility of Mr. McCoy's testimony, whether he is to be believed or not, he did state this much, that I believe is quite clear, that after the first vehicle clipped him or hit him, his car jack-knifed, his truck jack-knifed. When that truck jack-knifed, it became a very thorough obstacle to any other traffic.

The Court: No; his testimony was that the wheel—

Mr. Deutz: The wheels spun.

The Court: —the wheel spun and it was like that (illustrating) between them—

Mr. Deutz: Yes.

The Court: In other words, it was so close between.

Mr. Deutz: Yes.

The Court: I have heard all the evidence here and I suppose that anybody could argue from now on.

Mr. Deutz: May I point out one thing with regard to those collisions?

The Court: Yes.

Mr. Deutz: He gave us two impacts, one or two—

The Court: Yes. [346]

Mr. Deutz: —and then later, on cross examination, he stated that there were more than two.

The Court: A third one.

Mr. Deutz: Yes.

The Court: Which you were developing, I anticipate, to indicate that somebody hit the back end of that truck.

Mr. Deutz: No, your Honor. I was developing this: I was developing that, as Mr. McCoy testified, Mr. Uarte's car skidded to the right-hand side of the highway; I am speaking of in Mr. McCoy's position, as Mr. McCoy faced north, Mr. Uarte's car skidded all the way over to his right, it started quite a while back, he said quite a ways back, and then across the road again, at which time he came in contact with his vehicle, it hit the right front of that vehicle.

Now, four men have been on the stand and testified that upon the left rear of Mr. Uarte's vehicle there was cream colored paint, and I think it is quite obvious—

The Court: How could that get on the left rear, when Mr. McCoy said the truck was going this way (indicating), and it skidded across the highway?

Mr. Deutz: That is right.

The Court: Now, did it come around this way (indicating), and hit that way and wind up down here (indicating)?

Mr. Deutz: No. Your Honor, I believe that can be [347] explained. May I have a piece of chalk?

You have this truck and trailer coming in this direction—No. It will be in the opposite direction. (Counsel draws on blackboard.) You have the truck and trailer, if you take Mr. McCoy's statement, which was in this position right here (indicating). Mr. Uarte's car swerved across here (indicating).

I will go back a little further. It swerved across—

The Court: Straight across. No. Straighter than that, according to this diagram.

Mr. Deutz: Straight across?

The Court: Yes.

Mr. Deutz: And it came over onto the shoulder.

The Court: Yes.

Mr. Deutz: And it was headed back at the time of the impact.

The Court: Yes.

Mr. Deutz: Now, having the vehicle hit here (indicating), at the point of impact, your vehicle is in that position (indicating on blackboard).

The Court: All right.

Mr. Deutz: On the impact of that vehicle, we have testimony that on this rear fender there was yellow paint or cream paint.

The Court: Yes. [348]

Mr. Deutz: I believe it should appear from that, that after the striking of the front of this vehicle, upon the right side of this Golden State truck, this car swerved. Remember, this was a wet, slippery road. This car swerved and it came flat against the side of the Golden State truck. That is where the cream colored paint came in on the side of Mr. Uarte's vehicle, when the vehicle swung around and hit at this point.

The Court: No, he wouldn't have done that, counsel, because if that vehicle of 55,000 pounds had swung around—

Mr. Deutz: This wasn't the truck.

The Court: I know, but if it swung around against it, headed north, then, as you have it, with its 55,000 pounds of weight—

Mr. Deutz: This isn't the truck (indicating).

The Court: This (indicating) is the truck?

Mr. Deutz: Yes, your Honor, but assuming—

The Court: The truck is going the other way?

Mr. Deutz: That is right. The truck is going north. This car comes and hits here (indicating).

The Court: Yes.

Mr. Deutz: The car itself swings to this position (indicating).

The Court: That is right.

Mr. Deutz: And is found at rest right over here [349] (indicating), which is not inconsistent at all that it has come and slid sidewise, in sidewise again, and it has come to rest here, right next to the car where the colored people were standing.

The Court: I think it is a little inconsistent with the fact that with the momentum of 55,000 pounds of weight

against the average Ford sedan automobile, if that 55,000 pounds traveling at 40 miles an hour would hit that, that Ford sedan would have wound up in a great deal different position,—

Mr. Deutz: That sedan spun.

The Court: —than merely being knocked off the road.

Mr. Deutz: That sedan spun. When it hit, it hit a glancing blow, although it did considerable damage when it hit the right-hand side of the truck, it spun around until it was facing north and then spun on this side over here (indicating). Mr. McCoy testified that this truck jack-knifed across there. If that truck jack-knifed, and the Navy car hit it and bounced back up here (indicating), that Navy car was never below the point where this truck jack-knifed—it was impossible for it to ever get around. If the Navy car had hit that truck first, the Navy car would have wound up here, over on the side. Instead of that, the Navy truck wound up back up here (indicating).

The Court: It might have been, counsel—Certainly [350] nobody who has the limited facilities that I have or that any judge has is able to understand the law of physics enough to reconstruct an accident perfectly as it happened, after it happened, especially when you are dealing with speeds and a situation that is as greatly involved as in this case. But I heard all of the testimony here and most certain imponderables that nobody can describe were put on paper, and cases must be decided.

I think that, from my judgment, your motion should be denied and, moreover, from my judgment, I think the plaintiff is entitled to recover here. The question in my mind is the amount.

Mr. Deutz: Will your Honor hear argument on the question of negligence?

The Court: That is what I have been hearing.

Mr. Deutz: Well, this was directed on a motion to dismiss.

The Court: All right.

Mr. Deutz: This was not the argument on the case. The plaintiff has not even stated their theory of this case, to the present time.

The Court: Well, I suppose that the plaintiff has the theory that the defendant was negligent, or he would not have filed the lawsuit.

Mr. Deutz: Well, this is a case in which nobody knows [351] exactly what took place, but the question must be ascertained.

The Court: Judgment must be exercised as to the reasonable, probably consequences as to what happened there. All right. I would like to hear you.

Mr. Deutz: It is the plaintiff's opening argument.

Mr. McKnight: Well, your Honor, I believe under the circumstances—It is 9:10—I would like to waive my opening argument and hear counsel.

The Court: All right.

Mr. McKnight: And then if I may have a chance to answer him, if it appears necessary?

The Court: All right.

Mr. Deutz: Very well, your Honor.

Your Honor has indicated that it is the present opinion of the Court that there was negligence on the part of the government vehicle. We know, to begin with, that this was a wet, slippery road. There has been abundant testimony that Mr. Uarte's car had slick tires, smooth tires.

The Court: Is that negligence?

Mr. Deutz: It may not be negligence, but it may be a very good indicia of what might have happened in this particular case. You have a car driving down a highway. It is slippery. You have slick tires. You are driving on them late at night, at 11:30 at night. It is not unlikely that [352] people driving at that hour of the night, when they have been on a long trip, are inclined to be a little bit tired, maybe a little bit sleepy—

The Court: Maybe the Navy boys were. One thing I noticed about this case is a complete absence of testimony as to where they had been, where they were going, and how long they had been driving. I think if that had been at all material—In other words, I got to indulge in presumption here, as to that evidence that could have been produced, against the party that could have produced it, and I might say that the government certainly could have produced records.

Mr. Deutz: I have a man here in this building that could have testified in that regard, but I didn't feel it necessary.

The Court: Well, you did not produce them. The only point you are making is that you are saying that I have got to presume a presumption that Uarte was sleepy because he had been hunting and it was late at night and it was raining.

Mr. Deutz: I am just advancing another possibility, and that possibility is that it is not unlikely that a man driving at night can lose control of his car. It happens quite frequently, and on a rainy night, the results could be disastrous as they were in this accident.

The Court: Don't you think it would be more likely that a man would lose control of his car, that had passed [353] two trucks going 75 to 80 miles an hour?



Mr. Deutz: I would like to point out, your Honor, in that connection, we had a man on the stand here, a truck driver for the Golden State, who testified he was trailing another truck at a distance of a hundred yards, which, incidentally, is the legal minimum, he had to be at least a hundred yards, so his testimony was very nicely couched in those terms. Now, he testified that a car went by him at 70 to 80 miles an hour. With a space of 100 yards between those vehicles, and at a speed of 80 miles an hour, this Navy station wagon—which was supposed to have been done by a rather remarkable piece of skill—crossed into a space 300 feet long and decreased its speed to the speed of the truck, which was 40 miles an hour.

The Court: The cars were traveling at 40 miles an hour. How many feet was that a second?

Mr. Deutz: Yes, but their speeds were constant.

The Court: Yes, their two speeds; in other words, it was not moving into a solid space, it was moving into a moving space of a hundred yards.

Mr. Deutz: Yes, that is right, moving into a moving space of a hundred yards.

The Court: And in that space, he may have a thousand or two thousand feet.

Mr. Deutz: Well, that moving space was moving at the [354] rate of 40 miles an hour.

The Court: How far is that a second?

Mr. McKnight: Approximately 60 feet.

The Court: 60 feet a second?

Mr. McKnight: Approximately, yes.

The Court: Well, in three seconds it is 180, which is 3 times 60.

Mr. Deutz: And this man has a car coming towards him. So he suddenly darts into this space and he darted, according to the testimony.

The Court: And skidded.

Mr. Deutz: And skidded, so he skidded into this space at quite a remarkable speed and reduced his speed from 80 to 40 miles an hour, just like that (illustrating).

Your Honor, you could take judicial notice of the fact, I think, that that would be rather remarkable on a wet pavement.

The Court: Yes, but I believe that fellow's testimony, that truck driver; I believe his testimony.

Mr. Deutz: Well, that is where we differ in our opinion.

The Court: Well, that is my opinion.

Mr. Deutz: Also, he testified when the car passed them at 75 to 80, they could still read the insignia and everything on the car.

The Court: That is not quite his statement. He said he [355] saw "U. S. Navy" something.

Mr. Deutz: And "Recruiting."

The Court: And the other one said he saw it.

Mr. Deutz: That, of course, is a rather powerful observation.

The Court: I don't think so.

Mr. Deutz: With a vehicle passing at 80 miles an hour, and you have time to read all the description on it?

The Court: I don't think so. I think if an automobile were passing with some nice looking woman in it, then, a week later you could tell whether her hair was red or black.

Mr. Deutz: I think Mr. McCoy's testimony is to be given the benefit of any doubt. Mrs. McCoy was also in that car. They were the only eye-witnesses in this case.

The Court: Yes.

Mr. Deutz: Mrs. McCoy said she only saw one pair of headlights. She saw no dual pair of headlights, she saw no cars abreast, she saw no contact between vehicles. She did see this one car swerve toward them, and that car was the first one of the two cars in succession, that first car swerved toward them.

The Court: How could we know that the Ford sedan was the first car? How do we know that it wasn't the station wagon at this point?

Mr. Deutz: The answer to that is, if the station [356] wagon had been the first car, and if the station wagon had hit the Golden State truck, the station wagon could not have wound up in the position in which it ultimately wound up.

The Court: I don't understand that, but there isn't any testimony here at all that that first pair of headlights was the green car.

Mr. Deutz: Except that both Mr. and Mrs. McCoy testified that they believed that was the car. Now, what did they testify to—

The Court: But, the car that they saw skidding was the green car, first, but there isn't anything here, there wasn't any direct testimony at all that the first car coming down that road was the green car, as against that.

Mr. Deutz: But there was testimony that they never saw two cars abreast.

The Court: They saw four headlights.

Mr. Deutz: There was considerable doubt on that question.

The Court: Well, they did not say in that many words, four headlights. They saw a cluster.

Mr. Deutz: Mr. McCoy said on cross examination he could not positively state that those two cars were ever abreast.

The Court: That is right, but he said just before he saw the skid, he saw a cluster of headlights.

Mr. Deutz: That is right, and he saw a car skidding [357] there, and if that car skidded as Mr. McCoy testifies and hit the truck on this right-hand side, where I think photographs will indicate the damage did occur, the great damage to the car, to the truck, was on the right front, and if that right front was struck, this car would naturally swing down by the truck and would bypass it. The truck is going north. This car was going south. This car hits on the right side. If it hits on the right side, a glancing blow, how is it going to wind up back up the highway, up here?

The Court: Well, how is the truck going to turn around and be going around another direction, a 55,000-pound outfit, within a short space?

Mr. Deutz: We will get to that.

The Court: It is the same idea.

Mr. Deutz: Except when this car hits this truck on the right-hand side, it is quite obviously, unless it gets in the front directly or on this side (indicating), going to go on the left-hand side of that vehicle, which it did, because the paint marks on this south car indicate that it came smack up against the side of the truck and spun.

The Court: If it had done that, the back end of the Ford would have been crushed in, the blow would have come from the back, whereas, the evidence is it came on the side.

Mr. Deutz: It came from the side.

The Court: That is your witness' testimony. [358]

Mr. Deutz: That is right, and the side of it hit the Golden State truck. The rear did not hit. The side hit.

The Court: You maintain it hit the semi-trailer?

Mr. Deutz: That is right, the semi-trailer.

The Court: The trailer there is 24 feet long.

Mr. Deutz: That is right. At the point where the paint is rubbed off.

The Court: No, I can't go along with you.

Mr. Deutz: And when this truck makes a jack-knife, somewhere in this area up here (indicating), the vehicle coming down the highway, which is the Navy station wagon, hit that truck and bounced back.

The Court: That is all it did?

Mr. Deutz: That is the only explanation for the Navy station wagon being at that position.

The Court: So it got all crushed on one side and no crushing on the other—so it hit head-on?

Mr. Deutz: that is right.

The Court: And bounced back?

Mr. Deutz: That is right.

The Court: And got all crushed on one side and the other side is not crushed, and there was no side-swiping or anything? No.

Mr. Deutz: You will recall, this truck was in the process of turning. The collision with the Golden State [359] truck was not square into the side of the vehicle.

The Court: How is it going to bounce?

Mr. Deutz: The damage to the Golden State truck is on the right fender, the right headlight, at that area, and apparently that is the portion that was hit by the

Navy truck at the time of the impact, and that would account for the fact that the right fender of the Golden State truck was so severely damaged and the front and right side of the Navy truck, of the Navy car, was likewise very severely damaged. But, you know, that truck jack-knifed clear across the highway in the position that is shown in the illustration. Now, that can't be refuted. That is shown right there in your photograph.

The Court: Let me ask you this, counsel: Here, take this picture. How did that station wagon get all completely crushed on one side, almost as if somebody had taken it right from the middle of the radiator and just crushed it, and the other side didn't, and yet it bounced back and stayed in the same line of traffic and did not skid?

Mr. Deutz: It is one photograph.

The Court: Yes. This is the one taken at the accident. This you maintain, from this exhibit here, is just from hitting the **truck**.

Mr. Deutz: That is No. 5 and this is Exhibit 2.

The Court (continuing): And bouncing back? [360]

Mr. Deutz: That car, in our estimation, caught the Golden State truck in the process of turning. The photographs illustrate quite clearly that this truck did jack-knife—I don't believe there is any doubt of that—because when the truck came to rest, it had jack-knifed. Then, in the process of jack-knifing, the right front fender of the truck was opposed to any oncoming traffic, because the truck was jack-knifed in this position.

Likewise, a vehicle coming toward the truck from the north, the first portion to hit that truck in an angling position, while it is in the process of jack-knifing, would be the right front of that vehicle.



Now, the right front of the station wagon is the damaged portion, and as you will see here, your Honor, when you have the station wagon coming south and you have the truck in the process of jack-knifing, the first and most exposed part of that truck is the right front fender, and likewise, the vehicle coming from the north, the first point to come in contact with would be the right front of the Navy station wagon.

The Court: It could be, if we could see how it jack-knifed—

Mr. Deutz: We do know it jack-knifed.

The Court: Oh, Yes, but you say it is the first and the first exposed part, if we knew how it jack-knifed. [361]

Mr. Deutz: We know it jack-knifed to the left.

The Court: Yes, but we don't see how it jack-knifed.

Mr. Deutz: I think your Honor can take judicial notice that when a big object is turned to the left, that the right front corner is the foremost point exposed in that direction.

The Court: At sometime during the turning.

Mr. Deutz: If you take an object—

The Court: I understand you, counsel.

Mr. Deutz: You take an object and turn it—

The Court: I mean, after all, I have gone through the first grade. At some point in the turning.

Mr. Deutz: At some point in the turning, but at the time—the point is to show, your Honor, that the damage to the Golden State truck exists on that right front corner, so obviously, that was the point.

The Court: I thought you just got through telling me that it existed by virtue of the fact that the Ford sedan hit it.



Mr. Deutz: Apparently, and apparently there can be no other explanation. Both vehicles must have hit that one point. Firstly, they hit here, when the Ford sedan hit it.

The Court: I have heard the witnesses and testimony and the evidence, and I have reached the conclusion—and anybody can sit here, I mean alchemists, chemists, physicists, [362] engineers, and indeed, judges of the Circuit Court of Appeals and the Supreme Court can sit here and argue on these photographs and the evidence in this case and try to reconstruct the evidence, but, I am the one that is called upon to exercise judgment, from hearing the evidence and observing the witnesses, and I have reached the conclusion that the government is liable by virtue of negligence on the part of the defendant, and judgment will be for the plaintiff, and this is the amount—

Mr. Deutz: On the question of damages—

The Court: There isn't any question on the amount of money paid out.

Mr. Deutz: All we have is the witness' own statement as to what he paid out. He has had the opportunity to offer the receipted bills, which he failed to do. He had the opportunity to examine the doctor who was present here in Court as to what the doctor was paid. That he failed to do. The hospital at Madera is only 22 miles away and receipts could have been obtained. They were not obtained.

The Court: I think one witness testified to this fact. I think the witness was telling the truth. Do you think he was not telling the truth?

Mr. Deutz: I don't know. He is the plaintiff.

The Court: It seems to me very reasonable, the doctor bill of \$500.00, the hospital bill for the period that he

was [363] in there, and the fact that he is only asking for money he paid out to his mother and sister instead of to special nurses, for which he paid \$30.00. It seems to me there isn't any question about that at all. So we start out with the proposition that he is entitled to \$500.00 for the doctor bill; \$1,491.25 for the hospital bill; \$30.00 for special nurses; and he said he paid the hotel bills for his mother and sister—

Mr. Deutz: \$175.00.

The Court: —of \$175.00, and then he bought a brace.

Mr. Deutz: That was \$30.00.

Mr. McKnight: \$75.00, your Honor.

The Court: \$75.00 for the brace, but he did not put in the price of the crutches.

Mr. McKnight: A total of \$2,271.25, which is the exact amount prayed for in the complaint, your Honor, for medical expenses.

The Court: What is that, \$500.00, \$1,491.25, \$30.00, \$175.00 and \$75.00?

Mr. McKnight: Yes, your Honor. It should be \$2,271.25.

The Court: That is correct. All right.

Now, I haven't any idea what kind of general damages to allow. There isn't any limitation under this Tort Claims Act, is there, Mr. Deutz? [364]

Mr. Deutz: No, your Honor.

Mr. McKnight: May I suggest, also, that from July 24th until the middle—

The Court: What were his wages?

Mr. McKnight: From July 24th to the middle of February, when he says he went back to work, full time,

his losses at \$270.00 a month would be \$1,765.00, which is the amount we alleged in our complaint, making a total of \$4,036.25 special damages.

The Court: How much?

Mr. McKnight: Well, we have alleged in our complaint \$1,765.00. I believe that was the exact amount, making a total of \$4,036.25; and it is stipulated that the damages to the automobile were what?

Mr. Deutz: \$593.80.

The Court: \$593.80. That is \$4,630.05 special damages.

Mr. McKnight: Yes, your Honor.

The Court: All right.

Now, in the matter of general damages, on situations like this, it is a matter that I have never yet found a formula for, either for asking as a lawyer or deciding as a judge. How old is he?

Mr. McKnight: He is 36, I believe.

The Court: 36? [365]

Mr. McKnight: Or is that the age?

The Plaintiff: I am 37.

Mr. McKnight: 37, your Honor.

The Court: 37 years old. I think principally his damage would be from pain and suffering. Well, of course, the prognosis is perhaps indefinite; he will be deprived of occupational or recreational facilities, and things that he might have done. Still, people get deprived of those things by virtue of their very occupation, as I have found since I have been a judge.

Mr. McKnight: Well, he has suffered very severely.

The Court: Yes, he has suffered very severe pain.

Mr. McKnight: And I believe there is some permanent injury.

The Court: Yes, I think there is some permanent injury. I think that is almost obvious.

Mr. McKnight: He won't be completely recovered, of course not, at best.

Mr. Deutz: The doctor's testimony does not shed very much light on that point.

The Court: No, no, and I don't know that you could get any that would, because I think that any doctor would hesitate to indicate any prognosis of what might happen in the future, on a history of this kind of a case—it might be bad, it might be good, except that the testimony is that he [366] is steadily improving. Well, I guess nobody in the world would go through an experience like this, even if you had to pay them for it in advance, for any amount of money, but after all, there must be some reasonable limitation.

I think that the plaintiff here would be compensated if he had a judgment for general damages, for the sum of \$12,500.00.

And the judgment of the Court will be for \$4,630.05 special, and \$12,500.00 general, or a total of \$17,130.05, and in fixing that amount I have taken into consideration, as the Appellate Courts say, that I am entitled to and must, the decreased purchasing power of the dollar.

Counsel will prepare findings of fact and conclusions of law and a proposed judgment and submit them under

the rules, with the five days' notice, or longer if it is necessary for counsel to examine them.

Mr. McKnight: Yes, your Honor.

Mr. Deutz: As I will be returning to Los Angeles, I suggest a little longer than five days in the premises.

The Court: Well, I will hold whatever findings of fact and conclusions of law are submitted until I am satisfied, Mr. Deutz, that you have had an opportunity to examine them.

Mr. Deutz: Very well, your Honor.

The Court: All right. Court is adjourned.

[Endorsed]: Filed Sep. 9, 1948. Edmund L. Smith, Clerk. [367]

---

[Endorsed]: No. 12042. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Ernest J. Uarte, Appellee. Transcript of Record. Appeal From the District Court of the United States for the Southern District of California, Northern Division.

Filed September 23, 1948.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the  
Ninth Circuit

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 12042

UNITED STATES OF AMERICA,

Appellant,

v.

ERNEST J. UARTE,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Appellant intends to rely upon the following points on Appeal of the above entitled cause.

I.

That the District Court of the United States for the Southern District of California, Northern Division, erred in granting judgment for the appellee, and against the appellant herein, for the following reasons:

- (a) The trial court's findings of fact on the issue of negligence of the Government driver were clearly erroneous in that they were unsupported by the evidence adduced.
- (b) The appellant's motion for judgment and non-suit at the close of the appellee's case, and at the close of all the evidence, should have been granted.
- (c) The court erred in hearing testimony relative to the speed of the appellant's vehicle at a distance of 10 to 12 miles from the scene of the accident.

- (d) The court erred in hearing testimony relative to the speed of the appellant's vehicle at a distance of 4 to 5 miles from the scene of the accident.
- (e) The evidence as to special damages was insufficient and incompetent in that the court overruled the appellant's objection that the testimony of the appellee was not the best evidence of special damages when documentary evidence and/or qualified witnesses was available.
- (f) The court erred in permitting Don McCoy to be called and examined as an adverse witness by the appellee under the provisions of Rule 43(b).
- (g) The court erred in overruling the appellant's objections to the appellee's findings of fact.

II.

That the District Court of the United States for the Southern District of California, Northern Division, erred in not granting judgment for the appellant on its counterclaim against the appellee herein.

JAMES M. CARTER

United States Attorney

ERNEST A. TOLIN

Chief Assistant U. S. Attorney

CLYDE C. DOWNING

Assistant U. S. Attorney

Chief of Civil Division

MAX F. DEUTZ

Assistant U. S. Attorney

Attorneys for Appellant

[Endorsed]: Filed Sep. 23, 1948. Paul P. O'Brien,  
Clerk.



[Title of United States Circuit Court and Cause]

STIPULATION RE USE OF ORIGINAL EXHIBITS  
ON APPEAL

It is hereby stipulated by and between the parties hereto, through their respective counsel, that the original exhibits, consisting primarily of photographs, may be used on appeal by the Circuit Court of Appeals, subject to the approval thereof, in lieu of their reproduction in the printed record on appeal.

JAMES M. CARTER

United States Attorney

ERNEST A. TOLIN

Chief Assistant U. S. Attorney

CLYDE C. DOWNING

Assistant U. S. Attorney

Chief of Civil Division

MAX F. DEUTZ

Assistant U. S. Attorney

Attorneys for Appellant

STAMMER & McKNIGHT

By Galen McKnight

Attorneys for Appellee

It Is So Ordered This 24th Day of September, 1948.

CLIFTON MATHEWS

Judge, Ninth Circuit Court of Appeals

[Endorsed]: Filed Sep. 23, 1948. Paul P. O'Brien,  
Clerk.